

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 vs. NO: CR-15-4268 JB
6 ANGEL DELEON, et al.,
7 Defendants.

8
9 Transcript of excerpt of testimony of
10 Phillip Gonzales
11 April 18, 2018, and April 19, 2018
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1 THE COURT: All right. Does the
2 Government have its next witness or evidence?

3 MR. CASTELLANO: Yes, Your Honor. The
4 United States calls Phillip Gonzales.

5 THE COURT: Mr. Gonzales, if you'll come
6 up and stand next to the witness box on my right,
7 your left, before you're seated, Ms. Bevel will
8 swear you in.

9 PHILLIP GONZALES,
10 after having been first duly sworn under oath,
11 was questioned, and testified as follows:

12 THE CLERK: Would you please state your
13 name and spell your last name for the record?

14 THE WITNESS: My name is Phillip Gonzales,
15 G-O-N-Z-A-L-E-S.

16 THE COURT: Mr. Gonzales. Mr. Castellano.

17 MR. CASTELLANO: Thank you, Your Honor.
18 I'm checking with defense counsel regarding
19 exhibits.

20 THE COURT: All right. Take your time.

21 MR. CASTELLANO: Thank you, Your Honor. I
22 apologize for the delay.

23 MR. COOPER: May we approach, Your Honor?

24 THE COURT: You may.

25 (The following proceedings were held at

1 the bench.)

2 MR. COOPER: Judge, I believe that there
3 are a number of hearsay statements that were never
4 considered, and I just want to make sure that these
5 statements aren't elicited on direct examination.
6 For instance, Mr. Gonzales said that Billy Garcia
7 and Juan Mendez ordered it for an unknown reason,
8 but the CHS heard Ortega was hitting a lot. I don't
9 believe this witness has any personal knowledge of
10 Billy Garcia doing anything. And I just don't want
11 to be jumping up --

12 THE COURT: Are you going to try to get
13 that statement through them?

14 MR. CASTELLANO: No. I have another
15 witness for that statement.

16 MR. COOPER: Then there is another
17 statement in the Lino Giron thing here. He was in
18 segregation when Billy Garcia arrived. So I don't
19 think that he has anything to say based on personal
20 knowledge of Billy Garcia at Southern during the
21 timeframe that he will be examined.

22 MR. CASTELLANO: What we will say, he
23 heard he arrived and word spread throughout the
24 facility. When Billy Garcia arrived at the
25 facility, the environment changed when he got there.

1 And so --

2 THE COURT: Do you object to that?

3 MR. COOPER: I do. I think that he only
4 knows that through hearsay. He's in Seg. He can't
5 know that Billy is there.

6 THE COURT: He's not going to have
7 personal knowledge that he arrived?

8 MR. CASTELLANO: I don't know if he's got
9 personal knowledge. He's going to know that he got
10 there, though, because, like I said, the tone of the
11 prison changed. People started to, I guess, check
12 in.

13 THE COURT: Did he ever see him there?

14 MR. CASTELLANO: I know at one point I
15 thought he saw him through the window at Seg. I
16 don't remember if it's this timeframe. I can ask
17 him that.

18 THE COURT: Well, lay a foundation before
19 you ask him that. Because it seems to me that if
20 he's just hearing it, that he's hearing that is
21 being offered for the truth, so I'd probably need to
22 exclude it. I don't think his state of mind is
23 important, unless I'm missing something.

24 MR. CASTELLANO: I think it also goes to
25 the state of mind, because he will talk about the

1 rank structure and who would have been in charge of
2 the facility once Billy Garcia arrived. It would be
3 people like Lino Giron, Leroy Lucero, and Billy
4 Garcia. And so in his mind --

5 THE COURT: I don't think that the rank
6 structure -- I don't think that's a problem. He can
7 testify about that. If he doesn't know, he doesn't
8 have personal knowledge of Billy Garcia arriving,
9 then you may have to ask the questions of -- and if
10 Mr. Garcia were there, what would be the rank, and
11 leave it at that.

12 MR. CASTELLANO: I will. And I'll start
13 by asking -- I don't remember the exact answer.
14 I'll ask him first if he saw him when he arrived at
15 the facility, because he was in Seg.

16 THE COURT: If he can testify that he was
17 there, then he can give the rank structure with
18 Mr. Garcia there.

19 MR. COOPER: But he still can't talk about
20 how the mood has changed, even if he sees him,
21 because he's in Seg. He's by himself. He doesn't
22 know what's happening out in the facility.

23 MR. CASTELLANO: He would know what effect
24 it had on him, because it certainly would --

25 THE COURT: Then I think I have to leave

1 it at that, then, probably what effect did it have
2 on him.

3 MR. CASTELLANO: The other thing I'll give
4 the Court a heads-up on, statements. So when he was
5 in Seg after the murder, Angel DeLeon was next to
6 him. And actually, I think it's probably a
7 statement against interest, but we didn't notice it
8 up as that. Angel DeLeon made statements to him.
9 And I won't go into the content about what he said,
10 just that he made statements about it in --

11 MS. HARBOUR-VALDEZ: There were also some
12 statements that I believe are hearsay as to
13 Mr. Troup.

14 MR. CASTELLANO: Angel DeLeon made
15 statements related to the murder, and he mentioned
16 Mr. Troup's name. And we haven't moved that. The
17 Court does not see it as a statement against
18 interest. We haven't done that. Then I will also
19 not mention Mr. Troup related to the statements or
20 that Mr. DeLeon made the statement without getting
21 into the content of the statements.

22 THE COURT: Well, if you want to try to
23 get them in as statements against interest, then I
24 probably will need to look at the 302s and kind
25 of --

1 MR. CASTLE: He's already provided to the
2 Court -- that was the subject of our motion -- one
3 of them.

4 THE COURT: Is it on the chart? Did I
5 already rule on that?

6 MR. CASTLE: I don't think the Court has
7 ruled on it. But we submitted the 302 and --

8 THE COURT: I thought I did a chart on all
9 the statements against interests.

10 MR. CASTLE: I think there are some still
11 outstanding.

12 THE COURT: All right.

13 MS. HARBOUR-VALDEZ: Mr. Gonzales is one.

14 THE COURT: So Mr. Gonzales has this one,
15 so it's this one that he's making a statement about
16 truth, or is it also another one with Billy Garcia?

17 MR. CASTELLANO: The statement that Angel
18 DeLeon makes, he says he thinks, almost in a joking
19 manner, that he can see Castillo's ghost and
20 speaking to him.

21 Then he says that Mr. Troup was there. He
22 doesn't give any other detail other than saying he
23 was there. He doesn't state anything of that
24 nature.

25 MR. CASTLE: If he hasn't established,

1 he's not available at this point, Your Honor.

2 THE COURT: Let me see if I can dig out
3 the 302. Approach before you get to it. Let me see
4 if I find the 302.

5 MR. CASTELLANO: Mr. DeLeon said things to
6 him related to the murder, and no more, if I try to
7 go further.

8 MS. HARBOUR-VALDEZ: My understanding, the
9 302 says Mr. Gonzales says he never spoke with
10 Mr. Troup about either of these events. He heard
11 from other people, but he never spoke directly to
12 him.

13 MR. CASTELLANO: I think that's right.

14 THE COURT: Mr. DeLeon --

15 MS. HARBOUR-VALDEZ: Mr. Gonzales never
16 spoke directly to Mr. Troup. He's heard things, but
17 never spoke directly to him.

18 THE COURT: Let me see if I can dig out
19 those 302s and be ready for you. Is there just the
20 one statement involving Troup, and then one by Billy
21 Garcia, or just Troup?

22 MR. COOPER: This is just Troup, as
23 between DeLeon and Gonzales.

24 MS. HARBOUR-VALDEZ: And Gonzales.

25 THE COURT: All right. Let me see if I

1 can --

2 MS. HARBOUR-VALDEZ: Thank you.

3 (The following proceedings were held in
4 open court.)

5 THE COURT: All right. Mr. Castellano.

6 MR. CASTELLANO: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. CASTELLANO:

9 Q. Good afternoon, Mr. Gonzales.

10 A. Good afternoon.

11 Q. I apologize for keeping you waiting there.
12 We had to take care of some housekeeping. Can you
13 tell the members of the jury whether you are or ever
14 have been an SNM Gang member?

15 A. I have.

16 Q. And before you were an SNM gang member,
17 were you a member of any other gang?

18 A. A street gang, yes.

19 Q. What was the street gang?

20 A. Barelas.

21 Q. And does Barelas also refer to a certain
22 neighborhood in Albuquerque?

23 A. Yes, sir.

24 MR. CASTELLANO: Can I move the admission
25 of Government's Exhibit 790? This is what we've

1 often referred to as the pen pack. I believe it's
2 without objection.

3 THE COURT: Any objection from the
4 defendants?

5 Not seeing any objection, Government's
6 Exhibit 790 will be admitted into evidence.

7 (Government Exhibit 790 admitted.)

8 BY MR. CASTELLANO:

9 Q. Mr. Gonzales, I want to start with your
10 street gang. And if you can tell the members of the
11 jury how old you were when you entered that gang, or
12 joined.

13 A. I was 13.

14 Q. And what did you have to do to get into
15 the gang?

16 A. I had to get ranked in.

17 Q. What does that mean?

18 A. Getting beat up or fighting.

19 Q. Is that for a certain number of times, or
20 by a certain number of people?

21 A. Yes.

22 Q. About how long and how many people can
23 participate?

24 A. It all depends. Like, when you tell them
25 you want to join, like, how many is there, and it

1 usually go for 13 seconds, or sometimes it goes
2 longer.

3 Q. And then, like you said, it depends on how
4 many people are there, but if there are a number of
5 people there, are they all able to participate in
6 basically beating you?

7 A. Yeah, everybody will get a turn. You get,
8 like, maybe five members at first, and then, like,
9 when you're done, somebody will come and just, like,
10 sock you, and say, "Oh, I did my part."

11 Q. Now, once you joined the gang, what types
12 of things did you do with them?

13 A. Fight with other gangs, drink.

14 Q. And then who would be some of the other
15 gangs you would fight with?

16 A. Mostly all of them. We only got along
17 with only three other gangs there in Albuquerque.

18 Q. Have you ever heard of the San Jose Gang?

19 A. That was our main enemy.

20 Q. Are they also called San Jo for short?

21 A. Yes.

22 Q. What about 18th Street?

23 A. Yes.

24 Q. Can you tell us about other gangs, such as
25 Martineztown or Wells Park?

1 A. We got along with those gangs. They were
2 as big as us. We weren't that big, but we were
3 known to be crazy.

4 Q. And at some point, as part of your
5 membership, did you get involved in dealing drugs?

6 A. Yes.

7 Q. What type of drugs?

8 A. Crack cocaine.

9 Q. At that point -- is that the point in time
10 when crack cocaine was kind of a bigger deal?

11 A. Yeah, that's when it was getting pretty
12 big in Albuquerque.

13 Q. And since you were in the Barelás
14 neighborhood and dealing, was there ever a problem
15 with people from other gangs dealing in your
16 neighborhood?

17 A. Yes.

18 Q. What kind of problem was that?

19 A. We had other people, some gangs, that
20 would come in and try to sell, and we would stop
21 them.

22 Q. Why would you stop them?

23 A. Because that's not their neighborhood.

24 Q. I want to ask you specifically about a
25 person you confronted about dealing drugs. And was

1 this -- would you consider it disrespectful for
2 someone basically to be dealing drugs in your
3 backyard?

4 A. Yes.

5 Q. Did you confront anybody about having done
6 something like that?

7 A. Yes, I have.

8 Q. And what happened when you confronted that
9 person?

10 A. He told me that all he had was, like, two
11 rocks, two or three rocks, and that was it, and he
12 wasn't going to do it no more.

13 Q. Was he from a different gang?

14 A. Yeah, he was from Westgate.

15 Q. Did he live in your neighborhood?

16 A. Yes.

17 Q. Now, even though he was from a different
18 gang, if he wasn't dealing, was it a problem with
19 him living in your neighborhood?

20 A. No. Because at that time we were all
21 about the money, and that's the only thing that
22 mattered to us, was money. And as long as his
23 homies from Westgate weren't going to Barelás and,
24 you know, trying to party there or whatever, he
25 could live there, just as long as he wasn't trying

1 to post up there.

2 Q. At some point when you asked him to stop,
3 did he stop dealing in the neighborhood?

4 A. He did for, like, two weeks, then he
5 started again. He started in the alley, trying to
6 short stop.

7 Q. You said in the alley?

8 A. Yeah, in the alleyway.

9 Q. What does it mean, to short stop?

10 A. To try to get my customers before they
11 come to me, to try to sell to them before they could
12 reach me.

13 Q. So did you get word once again that he was
14 in the neighborhood?

15 A. Yes.

16 Q. What did you do in response to hearing
17 that information?

18 A. The second time, I tried to catch him, but
19 he took off running.

20 Q. Did you chase after him?

21 A. I did for a minute, but that was it.

22 Q. When you were in the gang, did you ever
23 have meetings at any certain places?

24 A. Yeah, we used to have meetings at Kit
25 Carson Park.

1 Q. For the members of the jury who don't know
2 where that is, where is Kit Carson Park?

3 A. It's in Barelvas. It's right there by
4 Tingley Beach.

5 Q. And is it close to the zoo?

6 A. Yes.

7 Q. And at some point did you have a
8 confrontation with this person who was dealing in
9 your neighborhood?

10 A. Yes.

11 Q. What happened as a result of the
12 confrontation?

13 A. Well, on a Sunday we were having a
14 meeting. And one of my friends wanted to go get
15 something to eat. I told him, "Let's go," but I
16 told him, "Let's take your car, because that guy
17 knows my car already."

18 So on the way there, I seen him in the
19 alley, and I told him to turn around so I could go
20 get him. But when I got out, he seen, so he took
21 off running.

22 So then my other friend came, and he's
23 like, "Well, let's just break into his apartment."

24 So he went and kicked in the door. As we
25 started loading stuff, his dad got home. And his

1 dad was like, "What the fuck are you guys doing?"

2 And one of my home girls came, and he
3 grabbed my home girl by the bangs and slammed her on
4 the ground. And that's when I got the gun -- I'm
5 like, Oh, this ain't happening. So I grabbed the
6 gun. And the guy that was down the alley --

7 Q. Which guy?

8 A. The guy that I was trying to catch.

9 Q. So the one that was dealing --

10 A. Yes.

11 Q. -- down the alley, but his dad is in the
12 apartment.

13 A. His dad was coming home from somewhere. I
14 don't know from where. But he seen us coming, like,
15 loading all the stuff in the truck from the front
16 door of the apartment. And that's when all that
17 started happening. That's when he grabbed my home
18 girl and slammed her. And I got the gun. And the
19 guy down the alleyway, his son, started saying,
20 "Run, Dad, run." And that's when I got the gun and
21 I shot him in the back of the head.

22 Q. And did you shoot him when he was running
23 away?

24 A. Yeah.

25 Q. Why were you stealing things from the

1 apartment?

2 A. Because we asked him not to be doing that.
3 We didn't care about him living there, but not to be
4 selling.

5 Q. As a result of this shooting, were you
6 prosecuted?

7 A. Yes, sir.

8 Q. Okay. I want to turn your attention to
9 Government's Exhibit 790. Mr. Gonzales, I'm going
10 to turn to page 69146 of that exhibit. And on here,
11 are there a number of charges that you were
12 prosecuted for?

13 A. Yes.

14 Q. Do you see that on there?

15 A. Yes, sir.

16 Q. And so as a result of this shooting, I
17 take it, because it says second-degree murder, that
18 the dad died; is that correct?

19 A. Yes, sir.

20 Q. And was there a firearm enhancement listed
21 there because you used a firearm to commit the
22 crime?

23 A. Yes, sir.

24 Q. And so in those days were you carrying a
25 firearm as part of your gang activity?

1 A. Yes, sir.

2 Q. And did this also result in a conviction
3 for aggravated assault with a deadly weapon?

4 A. Yes, sir.

5 Q. And conspiracy?

6 A. Yes, sir.

7 Q. Now, it also mentions bribery of a witness
8 and failure to appear. Was bribery of a witness
9 part of that case, or was it a separate case?

10 A. It has to do with the murder charge. But
11 all that was going over the custody of my daughter.
12 At the time, I was in jail; I bonded out. My ex
13 wasn't letting me see my daughter, so I was talking
14 to my lawyer. "If you get your daughter, you have
15 to file the paperwork. You keep your daughter until
16 the judge can make a decision who the baby is going
17 to live with."

18 I said, "All right."

19 So I called her and I asked if I could
20 have my daughter. She's like, "Yeah."

21 Then I went and got my daughter, showed
22 the lawyer that my daughter was here, so he filed
23 the paperwork. So when they tried to come pick up
24 my daughter, I served them, like, she's living with
25 me till the judge decides.

1 And so the grandma came up with this idea,
2 saying that I went and, like, told her about my
3 murder case, which I didn't. And then they tried to
4 say that I went over there threatening. Because one
5 day my daughter was crying for her mom, so I said,
6 "You're going to go see your mom." So I took her.
7 So she tried to get me jumped, and it wasn't
8 happening.

9 Q. So did that all result basically from a
10 child custody dispute?

11 A. Yes.

12 Q. And then were you charged as a result of
13 what happened there?

14 A. Yes.

15 Q. And there is also a charge here for
16 failure to appear. At some point did you
17 failure-to-appear on criminal charges?

18 A. Yes.

19 Q. And what happened to the failure to
20 appear?

21 A. All that was -- because my lawyer called
22 and said, "You need to go turn yourself in because
23 you got bribery of a witness."

24 I was, like, "I didn't do nothing. All
25 this is over my daughter's grandma, and it's lies,

1 because I never talked to her about the murder
2 case."

3 He's, like, "Well, you need to turn
4 yourself in."

5 I was, like, "I didn't do nothing. So you
6 guys catch me if you can." And that's when I went
7 on the run.

8 Q. So at that point, when you -- I guess
9 having a bad attitude about that charge, you just
10 figured, you know, if you catch me, you catch me?

11 A. Yeah, because I didn't do nothing wrong.
12 I didn't threaten nobody. You know what I mean?
13 But they believed them. I was, like, I didn't do
14 it, so...

15 Q. As a result, you were also charged with
16 failure to appear.

17 A. Yes, sir.

18 Q. And I take it they eventually caught you?

19 A. Yes.

20 Q. Were you convicted of all these charges?

21 A. Yes, sir.

22 Q. Did you plead guilty to all of those
23 charges?

24 A. I took a plea bargain, yes, sir.

25 Q. After that time, at some point, what was

1 your sentence? Do you remember how long you were
2 sentenced to prison?

3 A. They gave me 24 and a half years,
4 suspended eight and a half.

5 Q. So for the jury, who may not understand
6 that, if you have a sentence and part of it is
7 suspended, does that mean they just hold that part
8 over your head?

9 A. Yes.

10 Q. And then if you violate probation or
11 something, then that additional time can be
12 sentenced?

13 A. Yes, sir.

14 Q. So for example, if you have an 18-year
15 term -- this is just a hypothetical -- if you have
16 an 18-year term of prison, and nine is suspended,
17 does that mean you go to prison for nine years, and
18 they hold nine over your head?

19 A. Yes.

20 Q. Then when you get out of prison, since you
21 have nine years hanging over your head, do you then
22 serve probation and parole?

23 A. You can serve probation or parole, and
24 then if you violate or pick up a charge, they could
25 come back and you do the nine years.

1 Q. So the nine years that was hanging over
2 your head -- if you mess up on probation or parole,
3 they can then impose that time and send you back to
4 prison?

5 A. Yes.

6 Q. And in your case, part of your sentence
7 was suspended?

8 A. Yes.

9 Q. At some point in time did you get out of
10 prison?

11 A. Yes, sir.

12 Q. Do you remember about when that was?

13 A. January of 2007.

14 Q. And then let me turn to page 69152 of that
15 same exhibit. Okay. On this page it shows a
16 conviction for driving under the influence of
17 intoxicating liquor or drugs. Do you see that?

18 A. Yes, sir.

19 Q. Can you tell the members of the jury
20 whether a DWI conviction resulted in a revocation of
21 your probation?

22 A. Yes, sir.

23 MS. HARBOUR-VALDEZ: Your Honor, our
24 monitor is not working.

25 THE COURT: All right. Let's see. Can

1 you use that screen for a little bit, and we'll try
2 to get Robert in here to look at it?

3 BY MR. CASTELLANO:

4 Q. So when you violated probation, was it
5 ever for a new felony offense or was it for
6 misdemeanor DWIs?

7 A. Misdemeanor DWI.

8 Q. So as a result of the murder conviction
9 and other crimes, were you sentenced to prison?

10 A. Yes.

11 Q. And where did you first go when you got to
12 prison, Mr. Gonzales?

13 A. To RDC.

14 Q. And what is RDC?

15 A. It's, I guess, where you get your number
16 and they decide where they're going to send you, and
17 to what prison you're going to go to.

18 Q. And when you say "number," is that a
19 prison number?

20 A. Yeah, prison number.

21 Q. And then once you're in the system, do you
22 keep that number throughout your term of
23 incarceration?

24 A. Yes, sir.

25 Q. And then, as you said, at that place they

1 find a place to send you in the Corrections
2 Department?

3 A. Yes, sir.

4 Q. Where did you first end up; do you
5 remember?

6 A. From RDC, I went to Estancia.

7 Q. Just quickly, we have a timeline down.
8 Were you convicted of these charges on April 16 of
9 1998?

10 A. Yes, sir.

11 Q. Now you mentioned Estancia. What kind of
12 facility is Estancia?

13 A. It was state and federal at the time.

14 Q. What happened there? Did you basically
15 start serving your time there?

16 A. Yes.

17 Q. Do you remember how long you were at
18 Estancia?

19 A. And I know it was less than a year,
20 because they shut it down.

21 Q. When you got to Estancia, did you go
22 through a process called orientation?

23 A. Yes.

24 Q. Can you explain to the members of the jury
25 what orientation is?

1 A. Orientation is a place where they place
2 you, and then -- to see if anybody, I guess, say,
3 that is your enemy or you have enemies out there, so
4 they know not to put you out on the line. And it
5 basically just gets you ready, I guess, for the pod.

6 Q. And when you're in orientation, are you in
7 the pod but still kept away from the other
8 prisoners?

9 A. Yes.

10 Q. And during orientation, does that give you
11 the time to decide whether or not you want to stay
12 in that pod or move out of that pod?

13 A. The only place that you could -- you have
14 no choice. I mean, you have a choice, but that's
15 called PCing, protective custody. You know what I
16 mean? If they send you to that facility, you're
17 going to be stuck at that facility.

18 Q. What does it mean to PC?

19 A. Protective custody.

20 Q. In terms of the prison environment, is
21 that a good thing or a bad thing?

22 A. It's a bad thing.

23 Q. Why is it bad?

24 A. Because you're looked upon as weak, a
25 victim.

1 Q. When you got to Estancia, did you come
2 across any SNM Gang members that you knew?

3 A. Yes. Not all of them I knew that were SNM
4 at the time, but I knew guys, and then that's when I
5 got introduced that these are SNM members.

6 Q. Did you have a run-in with anybody when
7 you first got there?

8 A. Yes.

9 Q. Who was that person?

10 A. Lazy, Carlos.

11 Q. What's Carlos' last name, if you remember?

12 A. I can't remember. I think it's Herrera.

13 Q. Carlos Herrera?

14 A. Yes.

15 Q. You also knew him as Lazy?

16 A. Yes.

17 Q. What was the problem you had with him when
18 you first arrived?

19 A. I just barely got out of orientation. I
20 guess rec was over, they were coming back into the
21 pod. I was on the top tier talking to some guy I
22 knew from the county jail. And this guy just comes
23 in, and he starts mad-dogging me, so I'm mad-dogging
24 him back.

25 Q. Is that Lazy or someone else?

1 A. No, that's Lazy. Then all of a sudden, I
2 get, like, six or seven guys coming up to me, and
3 Lazy is the first one telling me, "What the fuck are
4 you looking at?"

5 And I tell him, "Well, what the fuck are
6 you looking at?"

7 And the next thing I know, this guy named
8 Mad Mike, he says, "What's your name?"

9 I said, "They call me Grumpy."

10 "Oh, you're Casper's cousin?"

11 I was, like, "Yeah."

12 So then he went and told the rest of the
13 guys that were there to let him and Lazy handle it
14 one-on-one. And Lazy didn't want to after that.

15 Q. Okay. So did you stand your ground?

16 A. Yes.

17 Q. Was that important to you?

18 A. Yes.

19 Q. Why?

20 A. Because if you show weakness, the other
21 convicts will eat you alive.

22 Q. Did you ever have other conversations with
23 Lazy, or did you eventually get along with him?

24 A. Not at first. Like, after that happened,
25 like, after some time, because my cousin called me

1 to the door, and he's, like, "What the fuck are you
2 doing? Don't you know who you're messing with?"

3 I'm, like, "It doesn't matter. I'm not
4 going to bow down."

5 He's, like, "Well, you need to watch it."

6 I'm, like, "All right."

7 So then Lazy calls me, he's, like, "Oh, I
8 was just testing you."

9 And we just left it like that. And then a
10 couple days after that, he asked me if I wanted to
11 clique up.

12 Q. What does it mean to clique up?

13 A. If I wanted to join the SNM.

14 Q. What was your response to that question?

15 A. I told him to hold on, and I told him,
16 "Who will bring me in?" And he said him. And I
17 told him, "I don't want to be brought in by you."

18 Q. By Lazy?

19 A. Yeah.

20 Q. What was the problem with him bringing you
21 in?

22 A. I just felt what happened between me and
23 him, I -- to me, that was weakness, him bowing down.

24 Q. So in other words, you two were supposed
25 to square off one-on-one?

1 A. Yeah.

2 Q. And he ended up not fighting you.

3 A. Yeah.

4 Q. Did you see that as weak?

5 A. Yeah.

6 Q. At that point did you come into the SNM?

7 A. Yes.

8 Q. How did that happen?

9 A. I got -- like, my cousin called me, told
10 me Wild Bill wanted to talk to me in the gym. So
11 then that's when I went to the gym.

12 Q. All right. Who was Wild Bill?

13 A. Billy Garcia.

14 Q. What did you think about getting an
15 invitation to go to the gym to meet with Wild Bill?

16 A. At first I was frightened.

17 Q. Why?

18 A. Because I didn't know, like, you know,
19 what did I do wrong? What's going to happen? And
20 this is my first time in prison. So then I went and
21 met with him in the gym. He put his arm around me.
22 I thought he was going to, you know what I mean,
23 maybe sucker punch me.

24 Q. When you say he put his arm around you,
25 who are you talking about?

1 A. Wild Bill. And I thought he was going to
2 sucker punch me. He's like, "No, youngster, it's
3 all right. I just want to talk to you."

4 And then Juanito is on the side of me. I
5 was in the middle.

6 Q. Who is Jaunito?

7 A. Juan Mendez. And they asked me about
8 joining. And I told them, "Oh, you know, hold on.
9 I don't know. This is my first time in prison. I
10 don't know what's going on."

11 I heard of the SNM because of my barrio,
12 Barelas, because a lot of them, the old-timers,
13 that's where they're from, the S. So that's how I
14 knew about them.

15 Q. Did you know people from your street gang
16 who had later gone to prison and become SNM members?

17 A. Yes.

18 THE COURT: Mr. Castellano, would this be
19 a good time for us to take our afternoon break?

20 MR. CASTELLANO: Yes, Your Honor.

21 THE COURT: All right. We'll be in recess
22 for about 15 minutes. All rise.

23 (The jury left the courtroom.)

24 THE COURT: Ms. Harbour-Valdez, is your
25 screen working now?

1 MS. HARBOUR-VALDEZ: Yes, Your Honor, I
2 believe it is. Thank you.

3 THE COURT: All right. We'll be in recess
4 for about 15 minutes.

5 (The Court stood in recess.)

6 THE COURT: All right. I think we've got
7 all the defendants and we've got a lawyer for each
8 defendant. All right. All rise.

9 (The jury entered the courtroom.)

10 THE COURT: All right. Everyone be
11 seated.

12 All right. Mr. Gonzales, I'll remind you
13 that you're still under oath.

14 THE WITNESS: Yes, Your Honor.

15 THE COURT: Mr. Castellano, if you wish to
16 continue your direct examination of Mr. Gonzales,
17 you may do so at this time.

18 MR. CASTELLANO: Thank you, Your Honor.

19 THE COURT: Mr. Castellano.

20 BY MR. CASTELLANO:

21 Q. At the break, Mr. Gonzales, we were
22 talking about meeting Wild Bill, or Billy Garcia, in
23 the gym. And I think you said he put his arm around
24 you and you began to talk?

25 A. Yes. He just asked me what I think about

1 the S, and would I join.

2 Q. And were you familiar with who Billy
3 Garcia was at that time?

4 A. Yes.

5 Q. And did you consider him to be an SNM
6 member?

7 A. Yes.

8 Q. And did you consider him to be a leader in
9 any way?

10 A. Yes.

11 Q. And what was your response when he asked
12 you about joining the SNM?

13 A. I got kind of freaked out, so I was, like,
14 "Whoa, hold on, let me think about it."

15 Q. Why did you need to think about it?

16 A. To see if that's really what I really
17 wanted to do with my life, you know what I mean?
18 Because I'm new in prison. I was only 19 years old,
19 and I wanted to see how prison was run. Because
20 this was my first time ever doing time, so...

21 Q. And did you talk to anyone or seek any
22 counsel from anybody about joining the gang?

23 A. I was talking to this guy named Lucky from
24 Westgate, and, you know, I told him, "Hey, what do
25 you think about me joining?"

1 MR. COOPER: Objection, hearsay.

2 THE COURT: Are you trying to elicit this
3 statement?

4 MR. CASTELLANO: I was, Your Honor. Not
5 for the truth, but to state of mind and his
6 decision-making.

7 THE COURT: Why don't y'all approach,
8 then.

9 (The following proceedings were held at
10 the bench.)

11 THE COURT: We don't know the name of this
12 guy?

13 MR. CASTELLANO: He calls him Lucky from
14 Westgate. All he is going to say is Lucky told him
15 not to join. And a few days later Boo-Boo, or
16 Robert Lovato, approached him about joining. And he
17 eventually joins. There is not a lot of substance
18 to it.

19 THE COURT: I guess I'm a little reluctant
20 to -- it doesn't tell us a lot about his state of
21 mind, if he rejected the advice. So I think I'll
22 sustain the objection.

23 MR. CASTELLANO: That's fine.

24 THE COURT: No sense letting it in for the
25 truth and then the jury -- I think I'll keep it out.

1 MR. CASTELLANO: It's not an assertion.
2 He tells him not to join the gang.

3 THE COURT: I'm not sure this person is in
4 a position to give him orders.

5 MR. CASTELLANO: No, it's a directive as
6 opposed to an assertion.

7 THE COURT: I don't know what he's going
8 to say. If it was advice, then it would be offered
9 for the truth. If, on the other hand, he just said,
10 "Don't join," I don't know what he's going to say,
11 unless we excuse the jury and listen to him.

12 MR. CASTELLANO: I don't think it's worth
13 it, Your Honor.

14 THE COURT: Let's just keep it out.

15 MR. CASTELLANO: Sure.

16 MR. COOPER: Thank you.

17 (The following proceedings were held in
18 open court.)

19 THE COURT: Mr. Castellano.

20 BY MR. CASTELLANO:

21 Q. Mr. Gonzales, you were telling us about
22 talking to someone from Westgate about joining the
23 gang. After that, did anyone else approach you
24 about joining the gang?

25 A. No. I was just -- just talked to him, and

1 that was it. And then they wanted my answer.

2 Q. And who was sent to you to get the answer
3 from you? In other words, who else asked you about
4 whether you were going to join the gang?

5 A. Boo-Boo, Robert Lovato.

6 Q. And is Robert Lovato someone you know as
7 Boo-Boo?

8 A. Yes.

9 Q. What happened when he asked you about
10 joining the gang?

11 A. He just asked me if I was going to it.
12 He's like, "If you do it, I do it."

13 And I told him, "Yeah, I'm going to do
14 it."

15 And he's, like, "Yeah, right, we'll go do
16 it."

17 Q. At that point did you guys both agree to
18 join the SNM?

19 A. Yes, sir.

20 Q. Did you know anyone else named Eugene
21 Martinez at that time?

22 A. Yes.

23 Q. Was he someone you also knew who joined
24 the gang close in time to you?

25 A. Yes, sir.

1 Q. Did you know Eugene Martinez by any other
2 names?

3 A. Huero.

4 Q. And who would you say brought you into the
5 gang?

6 A. Wild Bill, Juanito.

7 Q. Do you know if Wild Bill also brought
8 Eugene Martinez into the gang?

9 MR. COOPER: Objection.

10 THE COURT: Why don't you lay some
11 foundation if he knows who brought Martinez into the
12 gang?

13 BY MR. CASTELLANO:

14 Q. Were you around at any point in time when
15 Wild Bill had conversation with Eugene Martinez
16 about joining the gang?

17 A. All I know is that he was the one calling
18 the shots and he was the one, like, approving.

19 Q. And which facility was this?

20 A. Estancia.

21 Q. When you were at Estancia, you just
22 mentioned that Wild Bill was calling the shots. Was
23 he the highest-ranking SNM member at Estancia when
24 you were there?

25 MR. COOPER: Objection, lack of

1 foundation.

2 THE COURT: Well, if he was there, he can
3 answer that question. Overruled.

4 A. It was him and Felipe Cordova.

5 BY MR. CASTELLANO:

6 Q. At some point in time, or over time, did
7 anybody explain to you the rules of the gang?

8 A. Yes.

9 Q. What were some of those rules?

10 A. Stand your ground. When you see an LC,
11 you know, green light on sight. And just never let
12 nobody disrespect us.

13 Q. What was the problem with disrespect?

14 A. It makes you look weak.

15 Q. So at any time were you supposed to
16 tolerate disrespect?

17 A. No.

18 Q. You also mentioned green light on sight
19 for an LC. First of all, what is an LC?

20 A. That's a Los Carnales, the rival gang.

21 Q. And what did it mean to have a green light
22 on sight?

23 A. Beat them up, kill them, stab them.

24 Q. What was the rule about cooperating with
25 law enforcement?

1 A. That was a negative, that was a no;
2 couldn't do it.

3 Q. And what if a brother needed help?

4 A. Be there for him.

5 Q. Are you familiar with the term leaving a
6 brother flojas?

7 A. Yeah. You can't do that either.

8 Q. What does that mean?

9 A. Not to leave him hanging; always have his
10 back.

11 Q. So based on being an SNM Gang member, how
12 big was the SNM at Estancia while you were there?

13 A. It was pretty big.

14 Q. Do you know approximately how many
15 members?

16 A. I don't know approximately, but I know it
17 was pretty big.

18 Q. Do you know how many prisons in the state
19 where SNM had a presence?

20 A. We had all of them except for Grants.

21 Q. When you said "we had all of them," what
22 does that mean?

23 A. We were running all state prisons.

24 Q. Were you ever involved with drug
25 trafficking in the prison system?

1 A. Yes.

2 Q. And what types of drugs?

3 A. There was heroin, weed, a little bit of
4 coke.

5 Q. And how would you be involved with either
6 receiving or distributing any of these drugs?

7 A. They were sometimes given to me, and then
8 give them to others.

9 Q. If there was a leader at the facility,
10 what was the expectation of what a leader would get?

11 A. He would get a third of everything.

12 Q. From your gang or other gangs or
13 everybody?

14 A. From anybody.

15 Q. Was that out of respect, or fear, or what
16 was it?

17 A. Both.

18 Q. At some point in time did you move from
19 the facility in Estancia to the Southern New Mexico
20 Correctional Facility?

21 A. Yes.

22 Q. Is that the one here close to Las Cruces?

23 A. Yes, sir.

24 Q. At this time, Mr. Cordova (sic), I'm going
25 to show you what's already been admitted as

1 Government's Exhibit 792. Are you able to see that
2 on your monitor?

3 A. Yes, sir.

4 Q. It looks like from these records -- when
5 did you enter the prison system?

6 A. I entered the prison system in '98.

7 Q. These records only go back to as far as
8 1999; is that correct?

9 A. Yes, sir.

10 Q. So during the time that's displayed on
11 here, beginning with, at the bottom, November 15,
12 1999, to January 18, 2001, can you tell whether you
13 were at Southern at that time?

14 A. Yes, sir.

15 Q. I'll underline in red, a little easier to
16 see. At some point did you find yourself in
17 segregation at the Southern New Mexico Correctional
18 Facility?

19 A. Yes, sir.

20 Q. And do you remember approximately when
21 that was?

22 A. It had to be like in March, I think.

23 Q. For you I'm going to underline on here --

24 A. Okay.

25 Q. It's a little bit under March 27 of 2002,

1 in that timeframe. Do you recognize what housing
2 unit you were in?

3 A. Yeah, J1.

4 Q. As best as I can, I'm going to do a circle
5 around J1, which is June 6 of 2001 to August 6 of
6 2001.

7 A. Yes, sir.

8 Q. Does that sound right?

9 A. Yes.

10 Q. And do you remember how long you stayed in
11 segregation?

12 A. I know I stayed a while, because that's
13 when the murders happened. So they kept us locked
14 down longer.

15 Q. Why were you placed in segregation?

16 A. Because I was on hold (sic) time.

17 MR. SINDEL: I'm sorry, Your Honor, I
18 could not hear.

19 THE COURT: The question or the answer?

20 MR. COOPER: The answer.

21 THE COURT: "Because I was on hold time."
22 Is that your answer?

23 THE WITNESS: Yeah, the hole.

24 THE COURT: Oh, hole time.

25 MR. COOPER: Thank you, Judge.

1 BY MR. CASTELLANO:

2 Q. Can you tell the members of the jury what
3 it means to be in hole time?

4 A. I picked up disciplinary reports. And
5 like the punishment, they take you off population
6 and put you in segregation, and take away your good
7 time.

8 Q. At any point in time were you housed in
9 either the Ocean or Paul units?

10 A. I was held in O2, before I went to the
11 hole, or segregation.

12 Q. And at that point in time back in around
13 2000, 2001, were these general population units?

14 A. Yes, sir.

15 Q. So were you housed with SNM Gang members?

16 A. Yes, sir.

17 Q. Were you housed with non-SNM Gang members?

18 A. Yes.

19 Q. In your pod, do you remember approximately
20 how many SNM Gang members there were?

21 A. My pod, I would say at least half.

22 Q. And at least in your pod, were you ever
23 housed with enemies, including LC gang members?

24 A. No, they were not allowed to be around us.

25 Q. Why is that?

1 A. Because the administration already knew.
2 So if they would come, they would be undercover
3 ones.

4 Q. What does it mean to be undercover?

5 A. Nobody knows that they are but them. So
6 then we would find out.

7 Q. Okay. When you were in segregation, do
8 you recall if you ever saw with your own eyes Billy
9 Garcia arrive at the facility?

10 A. Yeah, I seen him in the yard.

11 Q. And how were you able to see him in the
12 yard?

13 A. When I was in the yard at the time.

14 Q. Were you in segregation at that time?

15 A. Yes, sir.

16 Q. And even in segregation, did you get yard
17 time?

18 A. Yes, but we were caged. They would put us
19 there singly and be, like, a row, be like five on
20 this side and five on this side.

21 Q. And did Billy Garcia arrive at the
22 facility when you were there?

23 A. When I was in segregation, yes.

24 Q. Were there leaders in the SNM before Billy
25 Garcia arrived?

1 A. Yeah.

2 Q. Who were the leaders?

3 A. Lino, Lino G.

4 Q. And as a leader, what were Lino G's
5 responsibilities?

6 A. To take care of the prison.

7 Q. In what way?

8 A. When anything would come up, like
9 sometimes they send hits from the North, from Santa
10 Fe; or, you know, to make sure nobody, like, within
11 us, within SNM -- make sure nobody is a rat, there's
12 no paperwork coming out, and if so, deal with it.

13 Q. So if those types of things did happen
14 when Lino G was in charge, was he responsible for
15 making sure something happened?

16 A. Yes.

17 Q. You mentioned something about hits from
18 the North?

19 A. Yes.

20 Q. How would you know about a hit coming from
21 the North?

22 A. Because when they get transferred, like,
23 other convicts would get transferred from the North
24 to over here, where we are, in Southern.

25 Q. And when you say the North, does that

1 refer to PNM up in Santa Fe?

2 A. Yes.

3 Q. So is that one way that messages could be
4 conveyed from one prison to another?

5 A. Yes, sir.

6 Q. Was Lino G seen as a good leader?

7 A. Not really.

8 Q. What was your criticism of him?

9 A. A lot of people always thought he was
10 weak. All he was was in it for the drugs.

11 Q. For example, if somebody was supposed to
12 be dealt with, what was Lino G's response, from your
13 experience?

14 A. How Lino G did it, he would tell
15 everybody, so hopefully, if somebody would drop a
16 kite. So nothing would happen; the kite would be
17 dropped on him, so they'll lock that guy up.

18 Q. So the jury understands, let's say
19 somebody is in harm's way and someone does, as you
20 say -- they drop a kite. First of all, what is a
21 kite?

22 A. Just like writing to the administration,
23 or letting a CO know, like, hey, this guy needs to
24 get off before anything happens to him.

25 Q. Okay. So if the administration finds out

1 that someone is in harm's way, they can remove that
2 person before they are harmed?

3 A. Yes, sir.

4 Q. Was that your experience, that that was
5 Lino G's style?

6 A. Yes, sir. That, or he would get people
7 that knew that they wouldn't do it. So he'll tell
8 them, and then the word will be out. And sometimes
9 the word would go back to the guy, you know what I
10 mean, and sometimes he'll PC on his own.

11 Q. I want to ask you about someone else named
12 Leroy Lucero. Did you know him as Smurf?

13 A. Yes, sir.

14 Q. Was he a leader at some point?

15 A. He had some kind of power.

16 Q. So you would consider him someone with
17 power, but not a leader?

18 A. Not a shot-caller.

19 Q. When Billy Garcia arrived at the facility,
20 who was the highest-ranking SNM member?

21 A. It would have to be Billy.

22 Q. I want to ask you, from your experience
23 there, once Billy Garcia arrived, what was the
24 environment like at the prison?

25 A. A lot of things were going to change.

1 Q. Why do you say that?

2 A. Because of the way Lino was running it,
3 and letting, like, everything that's supposed to get
4 cleaned up go.

5 Q. Was it your experience from dealing with
6 Billy Garcia that once he arrived, that things like
7 that would not be let go?

8 MR. COOPER: Objection, leading.

9 MR. CASTELLANO: I can rephrase, Your
10 Honor.

11 THE COURT: Why don't you do it. Try not
12 to lead.

13 BY MR. CASTELLANO:

14 Q. What was your opinion about what would
15 happen at the facility once Billy Garcia arrived?

16 A. The whole thing was going to change. The
17 way we are run, it's going to change.

18 Q. Change in what way?

19 A. Stuff that was supposed to happen is going
20 to happen.

21 Q. And when you say that, what do you mean?
22 What kind of stuff?

23 A. People that weren't supposed to be on the
24 line, they'll be getting off the line.

25 Q. Did you ever have discussions with people

1 about somebody named Rolando Garza?

2 A. I know him. Well, I know of him. I met
3 him.

4 Q. Were you aware of whether or not he was
5 potentially in harm's way?

6 A. Not at the time, I didn't know, you know
7 what I mean? I knew different stuff about him. But
8 nothing ever happened. I mean, like, I know
9 something happened when he was at the murder -- when
10 we were at Southern, his name came up. So they sent
11 word over where he was at. And those guys didn't
12 want to deal with it, so they sent him where we were
13 at. But I didn't know it was, like, about a murder;
14 I mean, like, they were going to kill him.

15 Q. You just knew that he had done something
16 wrong?

17 A. Yes.

18 Q. And were you personally aware of anybody
19 checking it in once Billy Garcia arrived at the
20 facility?

21 A. Larry Gutierrez.

22 Q. What does it mean, to check in?

23 A. PC, protective custody.

24 Q. Okay. So you were at the facility on
25 March 26 of 2001?

1 A. Yes.

2 Q. Let me show you again Government's Exhibit
3 792, a smaller portion there, which is now
4 highlighted on Exhibit 792. And if you're aware,
5 what is J1, or what housing unit is J1?

6 A. At the time, it was segregation.

7 Q. And what about L1?

8 A. L1 was when they started letting the
9 people -- like the level system kicked in, so they
10 were moving people around.

11 Q. And then I'll put a mark here next to the
12 timeframe of January 18, 2001, to June 6 of 2001.
13 So were you in J1 at that time?

14 A. Yes. Yes, sir.

15 Q. Was that segregation?

16 A. Yes, sir.

17 Q. During March 26, 2001, did you become
18 aware of two murders at the facility?

19 A. Yes, sir.

20 Q. Now, you mentioned you heard something
21 about Rolando Garza before. Had you heard anything
22 about Frank Castillo before the murders?

23 A. The only thing I heard about him --

24 MR. COOPER: Objection, hearsay.

25 THE COURT: Why don't you approach and let

1 me know what's going to be elicited.

2 MR. CASTELLANO: I'll rephrase, Your
3 Honor.

4 BY MR. CASTELLANO:

5 Q. Did you have any suspicion that Frank
6 Castillo was in harm's way?

7 MR. SINDEL: I'm going to object. There
8 is no foundation as to whether or not he had any
9 suspicion, unless it comes from hearsay.

10 MR. CASTELLANO: I'll rephrase again, Your
11 Honor.

12 THE COURT: All right.

13 BY MR. CASTELLANO:

14 Q. Were you surprised when Frank Castillo was
15 killed?

16 A. Yes.

17 Q. Do you recall what you were doing at the
18 time that the word began spreading through the
19 facility there was a double homicide?

20 A. I was in segregation, going to the shower.

21 Q. What happened at that time?

22 A. Everybody took off. Like all the COs took
23 off. So they left me in the shower in cuffs.

24 Q. So you're standing in the shower with
25 cuffs on?

1 A. Yeah.

2 Q. And by yourself?

3 A. Locked in, yes.

4 Q. So at some point did someone come and get
5 you out of the shower?

6 A. Yeah. Another CO came and got me out.

7 Q. About how long were you in there?

8 A. Thirty minutes to an hour.

9 Q. What happened at the facility as a result
10 of the murders?

11 A. We were out -- well, I was already in
12 segregation, but the facility got slammed down. And
13 I guess they started bringing the guys that they
14 suspect was involved.

15 Q. When you say the facility was slammed
16 down, did everybody pretty much get locked down?

17 A. Yes, sir.

18 Q. When you became an SNM member, were you
19 aware of somebody named Angel Munoz?

20 A. Yes.

21 Q. Who was he?

22 A. He was a shot-caller.

23 Q. Now, I want to distinguish him from
24 another Angel, Angel DeLeon.

25 A. Yes.

1 Q. Did you know who he was?

2 A. Yes, sir.

3 Q. Was he just another gang member?

4 A. Yes, he was just a soldier.

5 Q. You were in segregation at some point.

6 Was Angel DeLeon placed next to you in segregation?

7 A. Yes, he was my neighbor.

8 Q. And were you able to communicate with each
9 other?

10 A. Yes, sir.

11 Q. How could you communicate with him?

12 A. We could talk through the vents or just
13 through the door when we go to rec.

14 Q. And if you recall, approximately how many
15 days after the murders did he end up next to you?

16 A. I can't, like, really recall how soon that
17 was, but...

18 Q. In terms of time periods, would you say it
19 was more or less than a week?

20 A. About, yeah.

21 Q. And I don't want you to say anything about
22 what he told you, so I just want to ask you kind of
23 a yes-or-no question first. Did Angel DeLeon say
24 anything to you about the Castillo murder when he
25 was next to you? Just yes or no, did he say

1 anything to you?

2 A. Yes.

3 MR. CASTELLANO: At this time, Your Honor,
4 I move the admission of Government's 591.

5 THE COURT: Any objection from any
6 defendant?

7 All right. Not hearing any, Government's
8 Exhibit 591 will be admitted into evidence.

9 (Government Exhibit 591 admitted.)

10 MR. CASTELLANO: With the Court's
11 permission, I'd like to publish that to the jury.

12 THE COURT: You may.

13 BY MR. CASTELLANO:

14 Q. Okay, Mr. Gonzales, I'm going to have you
15 look at this, but I also want to make sure you have
16 the microphone in front of you so the jury can hear
17 you.

18 Okay. Looking at this photograph, do you
19 recognize the people in this photograph?

20 A. Some of them, yes, sir.

21 Q. Since you mentioned Angel DeLeon, I'm
22 going to circle somebody here and ask you if you
23 know that person.

24 A. Yeah, that's Angel.

25 Q. And did you know him to be SNM?

1 A. Yes, sir.

2 Q. So I'm going to start from left to right
3 on the back row of the exhibit. The first person
4 I've made a mark on is on the far left side, moving
5 to the right. Do you know who that person was?

6 MR. SINDEL: Your Honor, I'm going to
7 object. He's showing a photograph with the
8 individuals' names and asking him if he can identify
9 them. Why don't we block out the names and see how
10 well he does?

11 THE COURT: Well, it's already in
12 evidence. I'll let him answer the question. So
13 overruled.

14 BY MR. CASTELLANO:

15 Q. The first person -- and I won't worry
16 about the names. I want to know who you knew, with
17 or without names.

18 A. The one that's the third, like start from
19 the third.

20 Q. Let's start with the left. If you don't
21 know them, that's okay. So the first person on the
22 far left, who I've marked, do you know that person?

23 A. No.

24 Q. I'm now marking the second person.

25 A. No.

1 Q. The third person?

2 A. That's Tiny.

3 Q. Who was that?

4 A. Tiny, Robert Sanchez.

5 Q. The fourth person?

6 A. Chuco.

7 Q. Did you know Chuco by any other name?

8 A. Mandel Parker.

9 Q. The next person?

10 A. Pancho.

11 Q. Did you know Pancho by any other names?

12 A. Frank.

13 Q. Is that Frank Castillo?

14 A. Yes, sir.

15 Q. The next person?

16 A. Angel DeLeon.

17 Q. The next person over?

18 A. That's Joe.

19 Q. Joe who?

20 A. Gallegos.

21 Q. The next?

22 A. Boxer.

23 Q. And did you know him by any other names?

24 A. Just Ruben. I don't know his last name.

25 Q. The next person?

1 A. David Calbert, Spider.

2 Q. Now, moving to the front row, left, do you
3 know the first person?

4 A. That's Huero, Eugene Martinez.

5 Q. And was he the person who also came into
6 the S close in time with you in Estancia?

7 A. Yes, sir.

8 Q. The second person in line?

9 A. No, that's Looney.

10 Q. Did you know him by any other name?

11 A. Rolando. I really don't, like, know him
12 by his real name, but I know that's what his name
13 is.

14 Q. The third person from the left?

15 A. Critter.

16 Q. Do you know him by any other name?

17 A. Chris Chavez.

18 Q. And the last person?

19 A. Boxer.

20 Q. Were there two people you knew as Boxer in
21 this picture?

22 A. Yes, sir.

23 Q. Now for the people you identified as
24 people you knew, did you know each of the people you
25 identified as SNM Gang members?

1 A. Yes, sir.

2 Q. So I want to ask you about Joe Gallegos
3 here. I'm going to circle his head for the
4 photograph. When you first got to the Estancia, did
5 you run into Joe Gallegos?

6 A. Yes, sir.

7 Q. In Estancia did you know him to be a SNM
8 Gang member?

9 A. No, sir.

10 Q. So in Estancia, you did not know him to be
11 an SNM Gang member?

12 A. No, sir.

13 Q. When you got to Southern New Mexico
14 Correctional Facility, at that point did you come to
15 know him as an SNM Gang member?

16 A. Yes, sir.

17 Q. Christopher Chavez. Do you know him?

18 A. Yes. Me and him are from the same street
19 gang.

20 Q. So are you guys both Barelas?

21 A. Yes.

22 Q. Did you know him to be not only Barelas
23 but SNM?

24 A. Yes, sir.

25 Q. From what you knew of Joe Gallegos, did

1 you know him to bring drugs into the facility?

2 A. Yes, sir.

3 Q. Did you know him to do that at Estancia?

4 A. Yes, sir.

5 Q. And did you know him to do that at
6 Southern?

7 A. Yes.

8 Q. What types of drugs?

9 A. Heroin.

10 Q. And can you tell the members of the jury
11 whether that heroin was distributed to other SNM
12 Gang members?

13 A. Yes, sir.

14 Q. If you're able to, can you tell us whether
15 you see Joe Gallegos in the courtroom?

16 A. Yes, sir.

17 Q. Tell us what he's wearing and --

18 A. He has glasses, bald head.

19 Q. What color clothing is he wearing?

20 A. Black.

21 MR. CASTELLANO: Let the record reflect
22 the witness has identified Joe Gallegos.

23 THE COURT: The record will so reflect.

24 BY MR. CASTELLANO:

25 Q. I ask you if you see Christopher Chavez in

1 the courtroom.

2 A. Yes, sir.

3 Q. Where do you see him?

4 A. On the last row, the closest this way.

5 Q. What's he wearing?

6 A. Gray suit.

7 MR. CASTELLANO: Your Honor, let the
8 record reflect he's identified the defendant
9 Christopher Chavez.

10 THE COURT: The record will so reflect.

11 BY MR. CASTELLANO:

12 Q. Did you ever hear of a person named Arturo
13 Garcia?

14 A. I heard of him, yes.

15 Q. Have you ever met him personally or come
16 across him in the prison?

17 A. I never met him personally. The only time
18 I seen him was when they were moving from 1-B to
19 3-A, and he was in the rec cage. And I was in the
20 strip cages with him, and he was yelling out for
21 Juanito and Dan Dan and Rabbs, that he was going to
22 show everybody how it was going to get handled. And
23 he was talking about Julian Romero.

24 Q. Julian Romero?

25 A. Yes.

1 Q. And from that conversation, did you
2 understand that -- well, what was your understanding
3 of why he would deal with Julian Romero?

4 A. Because of the conflict between him and
5 Styx.

6 Q. Was that over Julian sleeping with Styx's
7 wife?

8 A. Yes, sir.

9 Q. And if you remember him, do you see Arturo
10 Garcia in the courtroom today?

11 A. No, I can't. Oh, yeah, he's in the far
12 corner.

13 Q. Can you tell us what he's wearing and
14 basically where he's seated?

15 A. Glasses. And I think that's like a dark
16 blue-colored T-shirt with a black jacket.

17 MR. CASTELLANO: Your Honor, let the
18 record reflect the witness has identified Arturo
19 Garcia.

20 THE COURT: The record will so reflect.

21 BY MR. CASTELLANO:

22 Q. And you said he was going to show people
23 how to handle Julian?

24 A. He said, "I'll show you how it's done."

25 Q. I want to ask you if you know Andrew

1 Gallegos.

2 A. No.

3 Q. And do you know Allen Patterson?

4 A. No, sir.

5 Q. You mentioned Billy Garcia before. Do you
6 see him in the courtroom?

7 A. Yes, sir.

8 Q. Can you please point him out and tell us
9 what he's wearing?

10 A. He's in the front row, wearing a white
11 T-shirt.

12 MR. CASTELLANO: Let the record reflect
13 the witness has identified the defendant Billy
14 Garcia.

15 THE COURT: The record will so reflect.
16 BY MR. CASTELLANO:

17 Q. I want to ask you if you know someone
18 named Edward Troup.

19 A. Yes, sir.

20 Q. And do you see him in the courtroom?

21 A. Yes, sir.

22 Q. Where do you see him?

23 A. He's in the front row on the last, wearing
24 a blue T-shirt.

25 Q. And did you know him to be an SNM Gang

1 member?

2 A. Yes, sir.

3 Q. Did you know him from Southern New Mexico
4 Correctional Facility back in 2001?

5 A. Yes, sir.

6 MR. CASTELLANO: Your Honor, let the
7 record reflect the witness has identified the
8 defendant Edward Troup.

9 THE COURT: The record will so reflect.

10 BY MR. CASTELLANO:

11 Q. When you were at Southern, did you know
12 anybody named Frankie Gallegos?

13 A. Yes, sir.

14 Q. Can you tell us whether or not Frankie
15 Gallegos was a member of the SNM?

16 A. Yes.

17 Q. Did you know him by any other names?

18 A. Cunte.

19 Q. Did you say Cunte?

20 A. Yes.

21 Q. Did you also know him by Frankie G?

22 A. Yes, sir.

23 Q. Do you recall the last time you saw Billy
24 Garcia when you were incarcerated?

25 A. The last time I seen him is in Las Cruces.

1 Q. Do you know if you ever ran across him at
2 a facility known at MDC?

3 A. Oh, yes, sir. That's when I came back on
4 a violation. I thought you were talking about me
5 still being in prison.

6 Q. So you mentioned the violation. Is that
7 one of your probation violations?

8 A. Yes, sir.

9 Q. What is MDC?

10 A. The county jail.

11 Q. Where is it located?

12 A. In Albuquerque, New Mexico.

13 Q. Do you remember about when that was when
14 you were at MDC?

15 A. I believe it was 2008.

16 Q. And was Mr. Garcia there?

17 A. Yes, sir.

18 Q. I want to ask you if someone named Big
19 Jake was there.

20 A. Yeah, he was there too. Yes, sir.

21 Q. What about someone referred to as Styx?

22 A. He was there, too.

23 Q. Okay, Mr. Gonzales, I want to ask you how
24 you ended up being a witness in this case. Can you
25 tell the members of the jury whether you were

1 arrested in December of 2016?

2 A. Yes, sir.

3 Q. And in December of 2016, were you arrested
4 after someone delivered a firearm to you?

5 A. Yes, sir.

6 Q. And did you later learn that that person
7 was cooperating with law enforcement?

8 A. Yes, sir.

9 Q. Who was that?

10 A. Robert Lovato.

11 Q. You earlier told the jury about somebody
12 named Boo-Boo, Robert Lovato.

13 A. That's the same person.

14 Q. That's the same person?

15 A. Yes, sir.

16 Q. Once you received that firearm from him,
17 how long was it after before you were arrested?

18 A. Not even five minutes.

19 Q. So pretty quickly?

20 A. Yes, sir.

21 Q. And once you were arrested at that time --
22 well, first of all, did you point out the firearm to
23 law enforcement?

24 A. Yes.

25 Q. And did you agree to cooperate?

1 A. Yes, sir.

2 Q. And this was December of 2016. As part of
3 your cooperation, can you tell the members of the
4 jury whether you also delivered or sold a firearm to
5 somebody else?

6 A. Yes, sir.

7 Q. And who was that person?

8 A. Jimmie Joe.

9 Q. Do you know his full name?

10 A. I think his last name is Lucero.

11 Q. And as a result of your cooperation -- do
12 you know whether he was a felon who also wasn't
13 supposed to possess firearms?

14 A. Yes, sir.

15 Q. And was he arrested as a result of your
16 cooperation?

17 A. Yes, sir.

18 Q. Also, as part of your cooperation, did you
19 try to give information about what's referred to as
20 a cold-case homicide?

21 A. Yes, sir.

22 Q. Did you give that information to law
23 enforcement authorities?

24 A. Yes, sir.

25 Q. Were you involved in that homicide?

1 A. No, I wasn't, sir.

2 Q. Was it someone else you knew to be
3 involved with the homicide?

4 A. Yes, sir.

5 Q. And do you recall the following September,
6 September of 2017, being charged with being a felon
7 in possession of a firearm?

8 A. Yes, sir.

9 Q. Mr. Gonzales, I'm going to show you
10 Government's Exhibit 793.

11 MR. CASTELLANO: First of all, I just got
12 a reminder I should move its admission first. At
13 this time let me move the admission of Government's
14 Exhibits 793 and 794.

15 THE COURT: Any objection from any
16 defendant?

17 Not hearing any objection, the Court will
18 admit Government's Exhibits 793 and 794.

19 (Government Exhibits 793 and 794
20 admitted.)

21 MR. CASTELLANO: Thank you, Your Honor.
22 At this time I'd like to publish 793 to the members
23 of the jury.

24 THE COURT: You may.
25

1 BY MR. CASTELLANO:

2 Q. Okay. Mr. Gonzales, I said you were --
3 you said you were charged with a crime in September
4 of 2017?

5 A. Yeah, that's the felon in possession of a
6 firearm.

7 Q. Yes, felon in possession of a firearm.
8 Did you plead guilty to that charge in December of
9 2017?

10 A. Yes, sir.

11 Q. Let me turn to the next page. So did you
12 understand, when you pled guilty to the charge --
13 first of all, I'll underline the words "felon in
14 possession of a firearm." Did you know that when
15 you possessed a firearm, you shouldn't possess it
16 because of your prior felony convictions?

17 A. Yes, sir.

18 Q. Did you also understand that in your case
19 the maximum penalty was up to 10 years'
20 incarceration?

21 A. Yes, sir.

22 Q. Let me turn to page 7 of that document.
23 Mr. Gonzales, when you pled guilty, did you
24 understand that you would -- I'm going to mark a
25 paragraph here -- that you would waive your

1 appellate rights? So in other words, once you pled
2 guilty to this charge, you will remain guilty and
3 the only way you can get out of this charge is if
4 your attorney was ineffective in some way?

5 A. Yes, sir.

6 Q. Looking at the last page of the
7 document -- actually, let me go to the first page of
8 the document. I'm circling here December 22, 2017.
9 Is that when you pled guilty?

10 A. Yes.

11 Q. Before you were charged in this case, were
12 you on conditions of release?

13 A. On pretrial?

14 Q. Yes.

15 A. Yes, sir.

16 Q. And can you explain to the jury what it
17 means to be under pretrial supervision?

18 A. Pretrial is that I'm out on the streets,
19 but I have to check in with the P.O. to -- I go see
20 a sentencing judge. And they just watch me. I got
21 to check in, and I've got to do UAs for them.

22 Q. When you say P.O., is that basically a
23 probation officer?

24 A. Yes, sir.

25 Q. And when you say UAs, is that urinalysis?

1 A. Yes, sir.

2 Q. Now, when you were charged in September
3 2017, did you have to go into custody?

4 A. Yes, sir.

5 Q. And what was that for?

6 A. For violating.

7 Q. So how did you violate your conditions of
8 release?

9 A. By drinking.

10 Q. Did you test three times for alcohol?

11 A. Yes.

12 Q. Now, from September 2017 through December
13 of 2017, did you then remain in custody for that
14 time?

15 A. Yes, September through December, yes.

16 Q. Did that give you a chance to dry out and
17 be alcohol-free?

18 A. Yes, sir. It got me to snap back into
19 realty.

20 Q. After that time, were you released back on
21 conditions?

22 A. Yes, sir.

23 Q. And you complied with those conditions
24 now?

25 A. Yes, sir.

1 Q. Have you tested positive for alcohol or
2 drugs since that time?

3 A. No, sir.

4 Q. And do you understand that as long as you
5 abide by your conditions, that you're allowed to
6 remain on conditions?

7 A. Yes.

8 Q. And if you violate, you'll go back to
9 jail?

10 A. Yes, sir.

11 Q. Okay. I'm going to show you now
12 Government's 794.

13 MR. CASTELLANO: And I'll move its
14 admission at this time. I may have already.

15 THE COURT: Government's Exhibit 794 has
16 been admitted.

17 MR. CASTELLANO: All right. If I may
18 publish that to the members of the jury.

19 THE COURT: You may.

20 BY MR. CASTELLANO:

21 Q. Mr. Gonzales, as part of your plea in this
22 case, did you also sign this addendum which says you
23 will cooperate with the Government?

24 A. Yes, sir.

25 Q. What's your understanding of your

1 cooperation in this case?

2 A. Just to try to, I guess, let them know the
3 information that I know; maybe it could help them.

4 Q. As part of your cooperation, are you
5 supposed to be truthful?

6 A. Yes, sir.

7 Q. Are you supposed to make anybody look
8 worse than they are?

9 A. No.

10 Q. Or better than they are?

11 A. No, sir.

12 Q. Let me turn to the second page of that
13 agreement. I'm going to show you paragraph 6, and
14 what's your understanding of what a 5K is? Here
15 it's identified as USSG Section 5K1.1. What does
16 that mean to you?

17 A. What that means to me is that I'll get a
18 little bit of help on my sentencing.

19 Q. And do you understand that your sentence
20 could be reduced if you cooperate with the
21 Government?

22 A. Yes, sir.

23 Q. And do you also understand that if the
24 Government doesn't file a motion on your behalf,
25 then it's really just up to the judge?

1 A. Yes, sir.

2 Q. And have you received a presentence report
3 in this case?

4 A. Yes, sir.

5 Q. And even though the statutory maximum
6 based on the crime is 10 years, what's your
7 understanding of the sentence you're currently
8 looking at, without any reductions by the
9 Government?

10 A. I believe it's four to five, or three to
11 five.

12 Q. You're thinking you're looking at about
13 three to five years?

14 A. Yes, if I understand you right, yes.

15 Q. Would it help to refresh your recollection
16 to look at that document?

17 A. Yes, sir.

18 MR. CASTELLANO: May I approach the
19 witness, Your Honor?

20 THE COURT: You may.

21 BY MR. CASTELLANO:

22 Q. I'll just have you read this quietly to
23 yourself. Mr. Gonzales, after having reviewed that
24 document, do you understand what your current
25 proposed sentencing range is?

1 A. Yes.

2 Q. What is that?

3 A. Three to four years.

4 Q. And do you understand that even if the
5 United States files a motion on your behalf, that
6 it's ultimately up to the judge to decide your
7 sentence in this case?

8 A. Yes, sir.

9 MR. CASTELLANO: May I have a moment, Your
10 Honor.

11 THE COURT: You may.

12 MR. CASTELLANO: Thank you, Your Honor. I
13 pass the witness.

14 THE COURT: Why don't y'all approach.

15 (The following proceedings were held at
16 the bench.)

17 THE COURT: Did you want the rulings on
18 these items that the defendants are wanting rulings
19 on?

20 MR. CASTELLANO: Yes, Your Honor.

21 THE COURT: Let me explain what
22 Mr. Castellano gave Ms. Bevel during the break. I
23 had already found the 302 -- I guess it's a 1023 --
24 one page there. Mr. Castellano gave me -- the blue
25 marks are mine, but he gave me that. It's a bit of

1 handwriting, but I can't read it beyond what it
2 says. He gave me the second page. He also then
3 gave me the other document, which is two pages.
4 It's dated 3/22/18. It's two pages. Again, the
5 blue marking is mine, but I did not have this. Does
6 everybody know what I'm looking at? If I need to
7 file these, or attach them to the clerk's minutes,
8 so we know what was given to me.

9 As far as these, I'm going to look first
10 here at the 1023, the statements there, and hope I
11 get all of these. This is, I guess, March 9. The
12 things that Phillip Gonzales heard and a number of
13 those heard, I think that's inadmissible hearsay.
14 So you can't do that. Mr. Gonzales can't relay
15 prison yard rumors to the jury to prove the truth of
16 those rumors. So I think those are out.

17 Mr. Troup bragged about being able to
18 green-light people. That's admissible against him
19 under 801(d)(2)(A).

20 Mr. DeLeon's statements, "I could see his
21 ghost," I think that's admissible as a present sense
22 impression or as an excited utterance, because
23 Mr. DeLeon's statement describes putting the two --
24 the 302 and the 1023 together, a nightmare
25 immediately after Mr. DeLeon experienced it. So I

1 think that's an 803(1) situation. And a nightmare
2 is a startling condition, and Mr. DeLeon made the
3 statement, in the words of 803(2), under the stress
4 or excitement that it caused. Here's where if
5 you're wanting to push this and get more out of this
6 witness, then you may have to get testimony from him
7 outside the presence of the jury. So I'll let you
8 decide whether you want to get this or not.

9 That Mr. DeLeon made jokes about the
10 homicide. It may or may not constitute statements
11 at all. I really don't know what the jokes are, and
12 there is nothing in the 302 that really tells me, so
13 it's hard for me to evaluate that. So I'd have to
14 determine whether Mr. DeLeon's jokes were intended
15 to communicate assertions of any sort before I could
16 make a determination there. So if you want to get
17 that in, I'd have to excuse the jury.

18 If Mr. DeLeon's jokes were assertions,
19 then I have to evaluate a little bit further the
20 statements' content and context and that's probably
21 to determine whether they're admissible as a
22 declaration against interests. It's a long way to
23 get there and it's up to you if you want me to take
24 testimony out.

25 Let me see. Then on the stuff that comes

1 from May 20, 2018. I believe that's 1023. No, it's
2 the 302. Mr. DeLeon's statements describing the
3 Castillo murder looks to me like about a month after
4 the Castillo murder -- apparently indicates that
5 Castillo was killed via hotshot, which, as I
6 understand from my trials, is a heroin overdose or
7 at least that Mr. Castillo was incapacitated by
8 heroin during the murder.

9 The other evidence that I have seen
10 indicates that he decided to kill Mr. Castillo and
11 Garza by strangulation, and not via a hotshot. And
12 so there is no evidence that I've seen to date that
13 indicates that Mr. Castillo had heroin in his system
14 when he died. So I don't think that Mr. DeLeon's
15 statements are supported by -- under 804(b)(3),
16 corroborating circumstances that clearly indicate
17 their trustworthiness, so I would not find that
18 they're statements against interests because of that
19 problem.

20 And then further, Mr. DeLeon's statements
21 indicating that Troup was with him during the
22 murder, well, that's not self-inculpatory as to
23 Mr. DeLeon, so I think that's not admissible under
24 804(b)(3). So I'm not finding much that's
25 admissible in that later 302. But you're probably

1 okay with the statements as I parsed them out in the
2 1023.

3 MR. CASTELLANO: One of the paragraphs, he
4 went in to do a shot, but not a hotshot. That's
5 page 45 of the 3/20/18 report. It was basically a
6 trick that they would go in to do that.

7 THE COURT: Is this the 302?

8 MR. CASTELLANO: Yes. This is the 302.
9 The way it read, they took him in there under the
10 guise of doing a shot, but not to kill him by using
11 a hotshot. So I think that changes the context a
12 little bit.

13 THE COURT: Do you have anything that
14 corroborates that, other than Mr. Gonzales'
15 statement on March 20? Do you have anything else
16 that corroborates that?

17 MR. CASTELLANO: No. These are statements
18 made to him by DeLeon. He doesn't know anything
19 more about them. He hasn't taken admissions from
20 any defendant. He has no other context, other than
21 what Mr. DeLeon told him.

22 THE COURT: Let me -- do you have anything
23 else that is going to -- any evidence anywhere that
24 corroborates the story about they went in to do a
25 shot?

1 MR. CASTELLANO: I don't recall. I'd have
2 to check on that.

3 THE COURT: Let's keep it out. It's not
4 clicking all the bases that the words of the rule
5 are -- it clearly indicates it's trustworthiness.
6 And so I'm inclined not to. If he's the only one
7 that says it, it doesn't get him much more --
8 doesn't really give me any corroborating
9 circumstances. It's just him. And I don't think a
10 statement against interest should be sort of
11 self-corroborating, and that's kind of what we got
12 with his statements on that, unless you've got some
13 other evidence to show --

14 MR. CASTELLANO: What I'd like to do, in
15 light of the Court's ruling, to avoid him saying
16 more, is to ask the additional question about when
17 Mr. DeLeon was in segregation with him, and
18 Mr. DeLeon at times would wake up and say, "I could
19 see his ghost," referring to Castillo.

20 THE COURT: This is out of the 1023?

21 MR. CASTELLANO: Yes, it is. And that
22 would --

23 THE COURT: Since I'm going to admit that,
24 it would be better from the defendant's standpoint
25 if he just leads him rather than him wandering off

1 and saying something.

2 MR. CASTLE: Before the Court makes that
3 decision, I've been able to look at the housing
4 records. They began to be next to each other on
5 June 28, 2001, so it's not anytime close to the
6 startling event. So it would have been 2/28/2001
7 that Mr. DeLeon went into cell 1104. And
8 Mr. Gonzales was in 1103. Otherwise, they were in
9 different pods completely.

10 MR. CASTELLANO: That may be. He said he
11 didn't remember specifically when they were housed
12 next to each other. But the one thing that remains
13 is that DeLeon would wake up and say, "I could see
14 his ghost."

15 THE COURT: I think that portion is going
16 to come in under 803(1). I do think then what Mr.
17 Castle is saying -- well, I guess I can't probably
18 justify it under 803(2). So its only basis is going
19 to be it's going to be an 803(1) statement.

20 MR. CASTELLANO: I think if DeLeon is
21 awoken and uses the words "I see his ghost,"
22 referring to Castillo, that doesn't have to be close
23 in time to the incident itself.

24 THE COURT: No, I agree. Well, the only
25 problem I have is that we're conflating a little bit

1 these two. For example, in the 1023 the statement
2 that we're reading -- see if I can find it -- DeLeon
3 would wake up and say, "I could see his ghost." You
4 have to lay some foundation that -- what I'm
5 concerned about -- that statement "woke up in the
6 middle of the night, 3:00 in the morning," and Mr.
7 Gonzales heard him waking up and saying: "I can see
8 a ghost." But the way it's worded is, "I could see
9 a ghost." So it's like the next morning he's
10 relaying that. Then I'm not sure that that's going
11 to be enough for a present sense. What you have in
12 the 302 is that -- is more compelling to me, because
13 it says DeLeon would wake up and ask: "Do you hear
14 it? Pancho is talking to me." And that seems to me
15 more of -- more solidly an 803(1) than the one in
16 the 1023. But I do think that that's an 803(1)
17 analysis. Do you think we need to excuse the jury
18 and listen to this?

19 MR. CASTELLANO: I think we should, Your
20 Honor. And I will say I think the statements in the
21 302 from 3/20/18 -- I think some of those refer to
22 the joking manner in which DeLeon would make these
23 statements. So I think that was an elaboration.

24 THE COURT: Which one? Because I didn't
25 see any jokes in the 302.

1 MR. CASTELLANO: Well, I think the 1023
2 refers to Mr. DeLeon joking about the homicide. And
3 the 302 is an elaboration on those jokes. So I
4 think some of those will come out as joking
5 statements by Mr. DeLeon.

6 THE COURT: Show me what you think are the
7 jokes. Because I read -- you can see my markings on
8 there -- I just didn't pick up any jokes there.

9 MR. CASTELLANO: I think it often is
10 uttering the words: "Do you hear it? Pancho is
11 talking to me." I think those are the jokes he's
12 referring to. I think we should do this out of the
13 presence of the jury. Those may not be statements
14 as a result of startling event in sleep. Those may
15 be jokes. So I think we should clear that up. So
16 that actually may help the defense, is what I'm
17 saying.

18 THE COURT: What I'm thinking is: If
19 that's the joke, I'm trying to think, given what
20 I've already said about his statements about the
21 Castillo murder, I'm wondering how this would come
22 in as a statement against interests. It seems to me
23 it's got similar problems.

24 MR. CASTELLANO: I agree with the Court.
25 That's why I'm saying to clarify those statements of

1 Mr. Gonzales, we may want to flesh that out outside
2 the jury's presence. And it may be they are not
3 present sense impression statements.

4 THE COURT: Is it better to excuse the
5 jury or just have Mr. Sanchez (sic) come over here
6 and let us know?

7 MR. CASTLE: Excuse the jury.

8 MR. CASTELLANO: I'm fine if that's what
9 the defense wants.

10 THE COURT: Do you want to excuse the
11 jury?

12 MR. COOPER: It's too difficult to have --

13 THE COURT: One other thing. I think
14 y'all asked about this rumor that Freddie Sanchez
15 was a snitch. I guess that can be offered to show
16 why SNM killed him, which is not a hearsay purpose.
17 But I need to tell the jury that that would be being
18 offered for a nonhearsay purpose, because I think it
19 is probative, even if Mr. Sanchez was not actually a
20 snitch. So I think that can come in, but it's going
21 to have to come in with a limiting instruction.
22 It's not coming in for the truth; it's coming in for
23 why he was killed.

24 All right. So let me let the jury go, and
25 then we'll --

1 MR. CASTLE: Your Honor, if we're going to
2 get into the Freddie Sanchez murder, we would ask
3 the Court to have a limiting instruction -- strike
4 that.

5 MS. HARBOUR-VALDEZ: Do you have a
6 timeframe on that?

7 (The following proceedings were held in
8 open court.)

9 THE COURT: All right. Rather than
10 everybody watching the back of our heads while we
11 try to figure some things out, why don't I let y'all
12 go back to the jury room for a little bit, and we'll
13 bring you back in shortly.

14 All rise. It's close to a break, so you
15 may be in there for a little bit, because I need to
16 let Ms. Bean have a break, too.

17 (The jury left the courtroom.)

18 THE COURT: All right. Everyone be
19 seated. All right. Do you want to proceed,
20 Mr. Castellano?

21 MR. CASTELLANO: Yes, Your Honor.

22 BY MR. CASTELLANO:

23 Q. Mr. Gonzales, we're just conferencing to
24 make sure we understand the questions I didn't ask
25 you earlier in front of the jury, and those were

1 questions from when Angel DeLeon was in segregation
2 next to you.

3 A. Yes.

4 Q. Do you remember those statements?

5 A. Yes.

6 Q. Now, one of the reports indicates that
7 sometimes he would say things to you in a joking
8 manner about what happened to Frank Castillo.

9 A. Yes.

10 Q. Move a little closer to the microphone,
11 please. I want to make sure we understand what
12 these statements were and the context in which they
13 were made. So when Mr. DeLeon was housed next to
14 you, first of all, did he say things to you in a
15 joking manner about killing Frank Castillo?

16 A. Yes.

17 Q. Were there times when he said things to
18 you that were not done in a joking manner about
19 Frank Castillo?

20 A. He said little things here and there.

21 Q. So I want to be able to distinguish what
22 was said in a joking manner and when, and the things
23 that weren't in a joking manner and when. So let's
24 start with the things he said to you that he said
25 that kind of in a joking manner.

1 A. He would say, like, "Can you hear that?"

2 I'm like, "Hear what?"

3 He goes, "That's Pancho asking why."

4 And I'd tell him, "Man, shut up."

5 Or sometimes he'd be, like, "Did you see
6 that ghost?"

7 I'd be, like, "What ghost?"

8 "Oh, Pancho. He's coming after me."

9 Q. Would he say those things from waking up,
10 or was he already awake and then made those comments
11 to you?

12 A. He was already up, like in the middle of
13 the day, like joking around.

14 Q. Now, what were some of the comments he
15 made to you that you considered not in a joking
16 manner?

17 A. Sometimes he would say like, "Hey, carnal,
18 you had to see his eyes."

19 I'm like, "What are you talking about?"

20 He's like, "The way he was dying, you had
21 to see him."

22 Q. Anything else that you recall?

23 A. Like he really didn't say, like, too much.
24 I know he brought up Troup's name once, and that was
25 it.

1 Q. What do you remember him saying about
2 Troup?

3 A. That he was in a cell with him.

4 Q. And when he said he was in a cell with
5 him, do you understand which cell that was?

6 A. Pancho's cell.

7 MR. CASTELLANO: That's all the questions
8 I had, Your Honor.

9 THE COURT: All right. Thank you,
10 Mr. Castellano.

11 Mr. Cooper, Mr. Castle,
12 Ms. Harbour-Valdez, anybody want to ask him any
13 questions?

14 MR. CASTLE: Judge, do you mind if I ask a
15 question?

16 THE COURT: Not at all.

17 CROSS-EXAMINATION

18 BY MR. CASTLE:

19 Q. You testified -- or I guess you said that
20 Mr. DeLeon would occasionally wake up in the middle
21 of the night and talk about a ghost.

22 A. I didn't state the middle of the night.
23 It would be the midday.

24 Q. Did he have any nightmares where he woke
25 up in the middle of the night saying anything?

1 A. No.

2 MR. CASTLE: I have no questions.

3 THE COURT: Ms. Harbour-Valdez?

4 MS. HARBOUR-VALDEZ: No, Your Honor.

5 Thank you.

6 THE COURT: Well, it doesn't -- maybe we
7 ought to discuss this here at the bench with the
8 white noise on.

9 (The following proceedings were held at
10 the bench.)

11 THE COURT: I guess I don't see it
12 being -- it's the nightmare, I think, that I was
13 thinking was the exciting event, not the murder.
14 And now we don't really have a nightmare. So I
15 don't think it's going to be 803(1) or 803(2). I
16 guess the only thing would be statement against
17 interests, and I think it suffers from the same
18 problem that the -- is analyzed, the shot issue in
19 the 302.

20 MR. CASTELLANO: I think it's closer to
21 the statements against interests because it's
22 clearly inculpatory, not something someone would say
23 unless it was against their penal interests. He's
24 describing the look in Castillo's eyes as he's
25 dying. And it is consistent with being strangled to

1 death. And we know the corroboration is there from
2 the ligature found around Mr. Castillo's neck when
3 law enforcement found him. So I think there is some
4 corroboration regarding the way that murder happened
5 and the way Mr. DeLeon described the look in Mr.
6 Castillo's eyes as his life was leaving him.

7 THE COURT: What's your thoughts on that?

8 MR. CASTLE: Well, I think if the Court
9 looked at Mr. Gonzales' prior statements that he
10 made, I think four or five prior statements, where
11 he doesn't even mention any of this. The fact that
12 the corroborating circumstances would show it's not
13 relevant maybe. I think the eyes statement was new
14 just now. It's not even --

15 THE COURT: What did you say,
16 Mr. Castellano?

17 MR. COOPER: He's going to go look for it.

18 THE COURT: I didn't see that in either of
19 the two reports I have. Let's do this: I'm
20 inclined to keep it out. Let me think about it
21 while we're doing some cross. And if I decide, I'll
22 let you know before the witness is excused. But I
23 think the only basis is this statement against
24 interests, and I didn't feel like there was enough
25 there for the shot testimony. I think it's the same

1 for this. I'll think about it. And if I change my
2 mind, I'll give you a shot on it.

3 MR. COOPER: Take a little break now?

4 THE COURT: Let's bring the jury back in
5 and go a while and take a break. How about that?
6 Because otherwise it will be a long break.

7 MR. COOPER: Okay.

8 (The following proceedings were held in
9 open court.)

10 (The jury entered the courtroom.)

11 THE COURT: All right. Let's go about 15
12 minutes, and then we'll take our last afternoon
13 break, and that will give Ms. Bean a chance to rest
14 her fingers.

15 Mr. Gonzales, I'll remind you you're still
16 under oath.

17 Were you done, Mr. Castellano?

18 MR. CASTELLANO: Yes, sir. Thank you.

19 THE COURT: All right. Mr. Cooper.

20 MR. COOPER: Thank you, Your Honor.

21 THE COURT: Mr. Cooper.

22 CROSS-EXAMINATION

23 BY MR. COOPER:

24 Q. Mr. Gonzales, you've spoken with law
25 enforcement at least six times from December 1,

1 2016; right?

2 A. Yes.

3 Q. And I think there are probably a couple
4 more beyond that, but I'll talk to you about that
5 later. But at least six times you have spoken to an
6 FBI agent, either Agent Acee or other people that
7 work with the FBI; correct?

8 A. I just recall maybe just Bryan, or one
9 other one. That's it.

10 Q. Okay. The first time you spoke with him
11 was on December 1, 2016; right? Does that make
12 sense?

13 A. Yes.

14 Q. And at the time you spoke to him on that
15 date, you never said anything about seeing Wild Bill
16 at Southern, did you?

17 A. They never asked questions.

18 Q. But you never said anything about him
19 being there, did you?

20 A. They never asked me.

21 Q. Okay. And you never said anything about
22 him going to Southern to clean things up, did you?

23 A. They never asked me that.

24 Q. Did you tell him that?

25 A. Nobody asked me.

1 Q. Did you tell him?

2 A. No, I didn't.

3 Q. And you never told them in that first
4 meeting that anybody checked themselves in when
5 Billy got there, did you?

6 A. No.

7 Q. No?

8 A. No.

9 Q. Thank you. The next time you spoke to the
10 agents, Bryan and Nancy Stemo, was on February 14,
11 2017, and they generated a report, a bunch of pages.
12 You talked about a lot of things that day; right?

13 A. What day was that?

14 Q. From December 14 -- I mean February 14,
15 2017. It was Valentine's Day last year?

16 A. Yes.

17 Q. That was a long interview with them,
18 wasn't it?

19 A. If I recall, yes.

20 Q. And in that interview, never once did you
21 tell them that you saw Billy Garcia at Southern New
22 Mexico Correctional Facility while you were in Seg,
23 while you were in the hole; right?

24 A. Correct.

25 Q. And never once did you tell them that Wild

1 Bill was going to clean things up when he got to
2 Southern; right?

3 A. I just answered the questions they asked
4 me. That was it.

5 Q. But you never told them about that, did
6 you?

7 A. No.

8 Q. And you had an agreement with them that
9 you would give them all of the information you had
10 relative to all the things they were discussing;
11 right?

12 A. Yes.

13 Q. And you have to give them as much
14 information, as much truthful information, as you
15 can in order to get your 5K; right?

16 A. Yes.

17 Q. You don't want to go back to prison, do
18 you?

19 A. No.

20 Q. And so you're going to give them every bit
21 of information that you have relative to the
22 incident that's they're talking about; right?

23 A. Yes.

24 Q. And you never told them that anybody at
25 Southern was checking themselves in when Billy got

1 there; right?

2 A. Yeah. Yes, sir.

3 Q. So that's the second time you've dealt --
4 or you had an interview with Mr. Acee, and you never
5 once talked to them about those three things; right?

6 A. Yes, sir.

7 Q. The third time, Mr. Gonzales, was on June
8 9, 2017. You met with Bryan, and you never said
9 anything about Wild Bill being seen by you while you
10 were in the hole after he came down to Southern;
11 right?

12 A. Like I say, I was just answering their
13 questions.

14 Q. And so the answer to my question is --

15 A. No.

16 Q. Did you see him?

17 A. No.

18 Q. Or did you tell them you saw him?

19 A. They didn't ask the questions.

20 Q. Did you tell them that you saw Billy that
21 day?

22 A. Not that day, no.

23 Q. That day, you never told them that when
24 you were in the hole, you saw Billy at Southern?

25 A. Oh, I've got to see the paperwork of the

1 statements that I made.

2 MR. COOPER: May I approach, Your Honor?

3 THE COURT: You may.

4 A. No, I did not.

5 BY MR. COOPER:

6 Q. So you did not, on this particular date,
7 tell the agents that you saw Billy Garcia at
8 Southern while you were in the hole; right?

9 A. No, sir.

10 Q. And you did not tell them that Wild Bill
11 would clean things up when he got to Southern, did
12 you?

13 A. No, sir.

14 Q. And you did not tell them that people were
15 checking themselves in because Billy was coming?

16 A. No, sir.

17 Q. So that's three times that you didn't tell
18 them something that you told us here today; right?

19 A. Yes, sir.

20 Q. On July 17, 2017, again you met with
21 Government agents; right?

22 A. Yes, sir.

23 Q. And on that day you never told the
24 Government agents you were meeting with, the
25 Government agents that you had promised to tell all

1 of the information relative to the incidents we're
2 talking about -- you never told them anything about
3 having seen Billy Garcia at Southern while you were
4 in the hole; right?

5 A. Yes, sir.

6 Q. Pardon me?

7 A. Yes, sir.

8 Q. Okay. That means you did not tell them?

9 A. I just answered the questions what they
10 asked me.

11 Q. Okay, I understand that.

12 A. And that's what I answered. Just like how
13 you're asking me, I'm doing the same thing.

14 Q. And you did not tell them.

15 A. If the paper says --

16 Q. Do you want to see it?

17 A. Yes, sir.

18 MR. COOPER: May I approach?

19 THE COURT: You may.

20 BY MR. COOPER:

21 Q. So Mr. Gonzales, you have now looked at a
22 report that was generated after your July 12
23 meeting -- July 12, 2017, meeting with Agent Bryan
24 Acee. And in that report there is no indication
25 whatsoever that when you met with him that day, you

1 told him that you had seen Billy Garcia at Southern
2 New Mexico Correctional Facility while you were in
3 the hole; right?

4 A. Yes, sir.

5 Q. And there is no indication in here that
6 you ever told him on this particular day that Wild
7 Bill was going to come down and clean things up once
8 he got there?

9 A. Yes, sir.

10 Q. And likewise, you never told him that
11 Billy Garcia -- because he was coming, people were
12 checking themselves in; right?

13 A. Yes, sir.

14 Q. So between December 2016 and July 13,
15 2017, a period of about seven months, four times you
16 met with the Government and you never told them any
17 of those things that you came in here to tell the
18 ladies and gentlemen of the jury about those things,
19 did you?

20 A. Yes, sir.

21 Q. You met with them again on July 20, 2017.
22 You did not tell the Government agents that you met
23 with that day that you had seen Wild Bill at
24 Southern while you were in the hole, in segregation;
25 right?

1 A. Yes, sir.

2 Q. And you never told them that Billy Garcia
3 was going to come down and clean things up once he
4 got there?

5 A. Yes.

6 Q. And you -- that's right, you did not tell
7 them?

8 A. No.

9 Q. And you never told them that people were
10 checking themselves in because Billy was coming;
11 right?

12 A. Right.

13 Q. And it wasn't until you met with the
14 Government on March 20, 2018, you met with them
15 again; right?

16 A. Yes, sir.

17 Q. And you did not tell them on that day that
18 you had seen Billy Garcia at Southern New Mexico
19 Correctional Facility while you were in the hole;
20 right?

21 A. Yes, sir.

22 Q. And that was just March 20. Where are we
23 at today? April 17? So it's about a month ago.
24 And you met with them in preparation for your
25 testimony here today; right?

1 A. I met with them.

2 Q. Okay. And you met with Mr. Castellano,
3 and you met with Special Agent Nancy Stemo?

4 A. Yes.

5 Q. And your lawyer was here; right?

6 A. Yes.

7 Q. And before that interview, you read all of
8 your prior statements; right?

9 A. Yes.

10 Q. You read all of your prior statements,
11 then you gave another statement. The sixth
12 statement where you did not say that you had seen
13 Wild Bill at Southern when he came down there;
14 right?

15 A. Yes.

16 Q. And you didn't tell them that once he got
17 there, he was going to clean things up; and you did
18 not tell them that people were checking themselves
19 in because Billy was coming. The first time you
20 ever said that was in this courtroom today; right?

21 A. Yes.

22 Q. That's a yes? Thank you.

23 THE COURT: All right. Mr. Cooper, would
24 this be a good time for us to take our afternoon
25 break?

1 MR. COOPER: Yes, Your Honor. Thank you.

2 THE COURT: We'll be in recess for about
3 15 minutes. All rise.

4 (The jury left the courtroom.)

5 THE COURT: The decisions I made up here
6 at the bench, let's just stay with those. I don't
7 agree with everything the defendants are saying
8 about the corroborating statement that the witness's
9 prior statements matter for Rule 803(b)(3) purposes.
10 What that talks about is the declarant's
11 trustworthiness, corroborating the hearsay
12 declarant, and not really corroborating the person
13 conveying the hearsay to the jury. But I think your
14 point is somewhat academic, given what I said up
15 here at the bench about the corroborating testimony.
16 So we'll leave that. So you've got the truth
17 statements and you've got the Freddie Sanchez
18 statements that I said you could get in. There
19 might have been something else. But at least the
20 others that we talked about outside the presence of
21 the jury, I'll exclude those.

22 All right. We'll be in recess for about
23 15 minutes.

24 (The Court stood in recess).

25 THE COURT: All right. Ms. Bevel is going

1 to get them lined up. Is there anything we need to
2 discuss before we bring them in?

3 MR. BECK: Yes, Your Honor. As I said,
4 Michael Jaramillo came in today under subpoena.

5 THE COURT: This is the one that --

6 MR. BECK: The one that we thought we
7 would have to get a warrant for. This was a big
8 misunderstanding. He is cooperative. He debriefed.
9 There will be -- I think the defense should have
10 notes from the agent immediately, probably today,
11 and then a 302 to follow. We do intend to call him.
12 We would like to call him soon, since it fits into
13 the first two counts. But I have a sense it will
14 take a little bit of time, because I think that
15 there will be more James statements in the
16 furtherance of the conspiracy. And obviously, since
17 he just came to the table out of the blue, the
18 defense don't have those, and don't have notice of
19 those yet. So I anticipate that he will, for a
20 multitude of reasons, probably need to -- my guess
21 is they will want us to push him back. And I
22 understand that. So I just want to alert everyone
23 that that's a new element.

24 THE COURT: Okay. But it sounds like
25 y'all are cooperating about when to call him?

1 MR. BECK: Yes.

2 MR. BLACKBURN: Speaking of cooperation
3 and stipulations, can we get the jury some coffee?

4 THE COURT: Well, I'm working on that. I
5 just found out -- they've got coffee back there.
6 There is no problem there. Ms. Bevel just told me
7 that the CRDs are instructed to tell them -- and she
8 uses the list that Ms. Wild has always used -- tell
9 them that they can't have coffee in the courtroom.

10 MR. BLACKBURN: We've got some really
11 important things to discuss.

12 THE COURT: And tell them that they can't
13 bring them in the courtroom. They've got coffee
14 back there, but they notice that y'all have coffee.

15 THE CLERK: And Your Honor, they just
16 mentioned, too, that they notice everybody is eating
17 candy and chewing gum.

18 THE COURT: And they're told not to do
19 that. So respect Ms. Bevel's instructions to you
20 until I walk it up the chain and see. I don't know
21 if some chief judge has made this decision, if it's
22 something with the clerk of the court. Let me find
23 out about it. I'm not sure I've had this problem
24 before. So let me check and see if we can loosen it
25 up.

1 MR. BLACKBURN: We're going to have to add
2 about six days on to the end of the trial if the
3 lawyers can't have coffee.

4 THE COURT: I don't know, it might go the
5 other way. You guys might be shaking and ready to
6 shut her down. I don't know. I'm aware of the
7 problem. We'll try to work on it. All rise.

8 (The jury returned to the courtroom.)

9 THE COURT: All right. Everyone be
10 seated.

11 Well, I understand there is a coffee/candy
12 controversy brewing here. Let me do this: Let me
13 see what I can do. I can't promise anybody anything
14 right at the moment, so we'll have to go with the
15 rule that I understand we normally operate under in
16 trials. This one, given the length of it, we're all
17 having to live together and stuff, I'll see what I
18 can do. It may be above my pay grade. There may be
19 a chief judge that has some order, or the clerk of
20 the court. I'll track down the source of the rule
21 that you were given by Ms. Bevel, Ms. Wild, probably
22 on the first day of jury service. We'll see about
23 it and I'll try to address that. I may not be able
24 to address it favorably, but I will work on it.

25 All right. Mr. Gonzales, I'll remind you

1 that you're still under oath.

2 Mr. Cooper, if you wish to continue your
3 cross-examination of Mr. Gonzales, you may do so at
4 this time.

5 MR. COOPER: Thank you, Your Honor.

6 THE COURT: Mr. Cooper.

7 BY MR. COOPER:

8 Q. Mr. Gonzales, on December 1, 2016, there
9 was a search warrant that was executed on your
10 house; correct?

11 A. In December, yes.

12 Q. December 1, 2016. And the FBI agents
13 located a Glock 9 millimeter handgun?

14 A. Yes, sir.

15 Q. And at the time you were a convicted
16 felon?

17 A. That's right.

18 Q. Can I ask you to pull that mic a little
19 bit closer to you, because I know that in a minute
20 some of those old guys in the back are not going to
21 be able to hear you. And I want them to be able to
22 hear you.

23 So you were arrested that day?

24 A. Yes, sir.

25 Q. And you had a hearing sometime after that

1 arrest, and you went and saw a judge; correct?

2 A. Yes, sir.

3 Q. And Agent Acee went to court with you,
4 didn't he?

5 A. Yes, sir.

6 Q. And he told the judge that he thought it
7 would be a good idea if you were released from
8 custody, if you didn't have to stay in jail pending
9 the resolution of your case, and he thought that you
10 ought to be under pretrial supervision; correct?

11 A. Yes, sir.

12 Q. You know that that normally does not
13 happen in this building, in federal court, don't
14 you?

15 MR. CASTELLANO: Objection to facts not in
16 evidence.

17 MR. COOPER: He can answer if he knows.

18 THE COURT: If he knows the answer, he can
19 answer that. If he can't, he can't.

20 A. I really don't know. This is my first
21 time being in a federal case.

22 BY MR. COOPER:

23 Q. If you're in state court and you get
24 arrested being a felon in possession of a firearm,
25 the cop just doesn't go to court with you and say,

1 "Hey, let this guy out; he's a good guy." That
2 doesn't happen, does it?

3 A. I honestly don't know. It's been a while
4 since I've been in court.

5 Q. Okay. So you were released on your
6 promise to stay out of trouble; you were released on
7 your promise to come back to court whenever they
8 wanted you there; right?

9 A. Yes, sir.

10 Q. And they told you: No alcohol, no drugs,
11 no weapons, don't break the law, whether it's local,
12 state, federal law; right?

13 A. Yes, sir.

14 Q. And you promised that you would do that.
15 You said, "Judge, if you let me out, I promise I'm
16 going to do that."

17 You may not have actually said that, but
18 it's implicit in the fact that they're telling you
19 that, and you say, "Yes, I want out." You made the
20 that promise to that judge, didn't you?

21 A. Yes.

22 Q. You broke that promise, didn't you?

23 A. Yes, sir.

24 Q. You broke that promise three times; right?

25 A. Yes, sir.

1 Q. And the first time you broke it, nothing
2 happened to you; right?

3 A. No, sir.

4 Q. And that was with alcohol; right?

5 A. Yes, sir.

6 Q. You broke it again. What happened?
7 Nothing; right?

8 A. No, sir.

9 Q. The third time you broke it, you finally
10 went back into custody; right?

11 A. Yes, sir.

12 Q. You got three chances. And I suspect you
13 got three chances because Agent Acee didn't want you
14 going back into custody; right?

15 A. Possibly.

16 Q. So you remained in custody September 14
17 through December 22, and on September 13, the day
18 that they found out that you had your third strike,
19 the third dirty alcohol test, they indicted you for
20 being a felon in possession of a firearm; right?

21 A. As I recall, yes.

22 Q. You went into jail, and it wasn't until
23 December 22 that you pled guilty to being a felon in
24 possession of a firearm; right?

25 A. Yes, sir.

1 Q. And you're pending sentencing on that?

2 A. Yes, sir.

3 Q. A presentence report has been prepared to
4 give to the judge; right?

5 A. Yes, sir.

6 Q. And you're just waiting to go to
7 sentencing sometime down the road?

8 A. Yes, sir.

9 Q. And the Government has told you, and you
10 have an agreement with them -- you have a little
11 contract where you're supposed to give information,
12 truthful information, to the Government and testify
13 at this trial. And if you do good, they'll make a
14 recommendation to the judge not to impose all of the
15 jail time that they -- that that judge can impose;
16 right?

17 A. Yes, sir.

18 Q. And the judge you're going to be sentenced
19 in front of is Judge Browning; right?

20 A. Yes, sir.

21 Q. And you know that you need to do
22 everything you can possibly do to make the people
23 who sit at this table -- to make them happy so they
24 can write a 5K letter to the judge telling him how
25 truthful you were and how important you were to the

1 prosecution of all these defendants; right?

2 A. As I recall, yes.

3 Q. So you're trying to give them as much
4 information, and trying to be as helpful to them as
5 you possibly can, because you want that 5K?

6 A. I'm just answering the questions they ask
7 me.

8 Q. Okay. And you're looking at how much
9 time?

10 A. Three or four years.

11 Q. Nobody has talked about this yet today,
12 but on July 22, 2016, you met an individual at the
13 Albuquerque zoo parking lot. That guy got in your
14 car, then you drove to Marquez Lane, and the guy
15 paid you \$1,100, and you sold him an ounce of
16 heroin; right?

17 A. That's incorrect.

18 Q. No? Never?

19 A. Never.

20 Q. Okay. So you weren't selling any heroin
21 while you were out on the streets?

22 A. No.

23 Q. Okay. So do you have any nicknames?

24 A. Grumpy.

25 Q. What else?

1 A. That's it.

2 Q. That's the only one?

3 A. Yes, sir.

4 Q. Have you ever sold drugs?

5 A. When I was a teenager, yes.

6 Q. I'm sorry?

7 A. Yes, when I was a teenager.

8 Q. But nothing since then?

9 A. In prison.

10 Q. Okay. And when was the last time you sold

11 drugs in prison?

12 A. Maybe like 2000.

13 Q. Did you get prosecuted for that?

14 A. No.

15 Q. Did you ever tell anybody that you sold

16 those drugs in prison in 2000?

17 A. It wasn't like I was selling big drugs.

18 Just like if somebody give me a paper, I'd sell it.

19 Q. Is that against the law?

20 A. Yes.

21 Q. Did you ever get prosecuted for it?

22 A. No.

23 Q. You grew up in Barelás?

24 A. Not really.

25 Q. Not really. Where did you grow up?

1 A. I grew up in the Heights.

2 Q. In the Heights. How did you -- if you
3 grew up in the Heights, how did that happen that you
4 became a member of the Barelvas Gang?

5 A. I was friends with them.

6 Q. You were friends with them?

7 A. Yes.

8 Q. Where did you meet them?

9 A. I met them there at the ballpark.

10 Q. At Tingley or Martineztown?

11 A. There is a ballpark right across the
12 street from the zoo.

13 Q. Okay, at Tingley. And you joined the gang
14 when you were 13 years old?

15 A. Yes, sir.

16 Q. How did you get from the Heights down to
17 the ballpark?

18 A. Because I hung out with the older ones;
19 they all had cars.

20 Q. Do you know Juan Baca?

21 A. I met him a few times.

22 Q. Okay. You've heard of him?

23 A. Yes.

24 Q. Do you know Julian Romero?

25 A. Yes, sir.

1 Q. And they're Barelás guys, aren't they?

2 A. Yes, sir.

3 Q. You heard about the disagreement between
4 Styx and Julian?

5 A. Yes, sir.

6 Q. And you know that that caused a big
7 split --

8 A. Yes, sir.

9 Q. -- with the S?

10 A. Yes, sir.

11 Q. Would you consider yourself to be a Styx
12 guy or a Julian guy?

13 A. I was just S.

14 Q. Just S?

15 A. I was S. But I would have to go with
16 Julian.

17 Q. Okay. Because he's from your barrio?

18 A. Yes.

19 Q. Most of the S are going with Styx, aren't
20 they?

21 A. The majority, yes.

22 Q. Yeah. So you, because you're loyal to
23 Julian, would be in the minority; correct?

24 A. It just wasn't divided just like that. It
25 was divided four different ways.

1 Q. And how is that?

2 A. There was Wild Bill, there's Styx, there's
3 Pup, and Julian.

4 Q. Okay. But with regard to the Styx/Julian
5 incident, where Julian started going out with Styx's
6 old lady, that created the split with the S; right?

7 A. I just give my opinion. I believe that
8 should have been a personal issue, had nothing to do
9 with the S. But Styx is the one that made it an S
10 thing.

11 Q. And when he made it an S thing, he made it
12 difficult for guys that supported Julian; right?

13 A. Yes.

14 Q. And so a lot of people were reluctant -- a
15 lot of people did not really want to show anybody
16 that they were with Julian, because they knew that
17 Styx would create problems for them; right?

18 A. Yeah.

19 Q. Yeah. Did you make it known that you were
20 on Julian's side?

21 A. Yes, sir.

22 Q. Okay. So you weren't afraid of what might
23 happen?

24 A. No, I just -- what I believed in.

25 Q. Okay. I read somewhere where you read in

1 one of those reports I showed you that you said that
2 the SNM is all washed up and they're done?

3 A. Yeah, it is.

4 Q. They're not to be feared anymore?

5 A. Certain ones, yes.

6 Q. Okay. Most of those guys are Styx guys,
7 aren't they?

8 A. There could be anybody. It doesn't
9 necessarily have to be with Styx.

10 Q. Now, when you were in orientation down at
11 Southern, back in 2001, you went into orientation on
12 January 18, 2001, and you stayed there until
13 August -- or actually it wasn't orientation, was it?
14 It was in the hole?

15 A. Segregation.

16 Q. For disciplinary reasons; right?

17 A. Yes, sir.

18 Q. And you were there from January to August?

19 A. Yes, sir.

20 Q. And so you had whatever the disciplinary
21 reports were that you had, and that's what caused
22 you to go to the hole?

23 A. Yes, sir.

24 Q. Now, when you went to the hole, Lino had
25 the keys at Southern; correct?

1 A. Correct.

2 Q. And you know that Lino left Southern
3 February 5 of 2001?

4 A. Yes.

5 Q. He went back to PNM, and then eventually
6 to Virginia; right?

7 A. Yes.

8 Q. So when he left, there was a void of
9 leadership there?

10 A. Right.

11 Q. And when he left, Leroy Lucero, T Bone,
12 those guys filled that void, didn't they? They were
13 the next highest-ranking guys there?

14 A. Yes.

15 Q. So then they got the keys until somebody
16 else comes along?

17 A. Somebody that had more power, yes.

18 Q. Okay. And so from February 5, 2001, when
19 Lino leaves, those are the guys that assumed control
20 over Southern; right?

21 A. T Bone didn't want it.

22 Q. T Bone didn't. But Leroy did; right?

23 A. He was the one, yes.

24 Q. So he was the guy?

25 A. Yeah, for the moment.

1 Q. Where was Angel Munoz at the time? He was
2 on the streets, wasn't he?

3 A. I don't know if he was on the streets. I
4 think he was in P-1.

5 Q. Where is P-1?

6 A. In Southern. That's where I remember
7 seeing him. I can't say if he was on the streets.
8 I remember seeing him in prison.

9 Q. Before Christmas, though, or --

10 A. It's been so long, so like --

11 Q. Yeah, this happened back in 2001, so --

12 A. But I know he was in P-1, because I was
13 with him when the line was open. I was in O-2. He
14 was in P-1.

15 Q. When the line was open?

16 A. Yes.

17 Q. And when was the line open?

18 A. In '99, 2000, 2001.

19 Q. Are you sure?

20 A. Not really. Wait a minute. I got locked
21 up in 2001, so it was still open then.

22 Q. Okay. When you say the line was open --

23 A. It was population, like --

24 Q. General pop?

25 A. It was controlled movement. But it was

1 general pop. Like the 1s would go out with the 1s,
2 and the 2s would go out with the 2s.

3 Q. Okay. But you don't know when Angel left?

4 A. I know he got paroled. It had to be
5 sometime like when he was done with the hole,
6 because he was my neighbor. I don't know exactly
7 what year that was. It could have been 2003.

8 Q. It could have been '99?

9 A. No, because he was there when the line was
10 there.

11 Q. So if he were there, wouldn't he be the
12 shot-caller?

13 A. You're talking about DeLeon?

14 Q. No, no, no, Munoz.

15 A. No, he wasn't there. I'm sorry, I got
16 that confused. I'm sorry.

17 Q. My fault. I confused you. So who is
18 Angel Munoz?

19 A. He was a shot-caller.

20 Q. A jefe?

21 A. Yeah.

22 Q. I mean, like the main guy. In the old
23 days it was Juan Baca; right?

24 A. Yes.

25 Q. Then Juan decided to leave the S?

1 A. Yes.

2 Q. And when he did, Angel assumed control of
3 the S; right?

4 A. Yes.

5 Q. And he was, I mean, bigger than anybody?
6 He was at the top?

7 A. Yes, sir.

8 Q. So the same questions now with regard to
9 Angel Munoz. Sorry, I didn't mean to confuse you.
10 So Angel Munoz -- he was out on the streets?

11 A. Yes, sir.

12 Q. Okay. And even though he's on the
13 streets, he's making calls, isn't he?

14 A. From what I know of, he can, yes.

15 Q. He's that strong?

16 A. Yes.

17 Q. Or he was?

18 A. Yeah, he was.

19 MR. COOPER: May I have a moment, Your
20 Honor?

21 THE COURT: You may.

22 MR. COOPER: Your Honor, I don't believe I
23 have any more questions for this witness.

24 THE COURT: Thank you, Mr. Cooper.

25 Any other defendant have questions of Mr.

1 Gonzales?

2 MR. SINDEL: I do, Your Honor.

3 THE COURT: All right. Mr. Sindel.

4 CROSS-EXAMINATION

5 BY MR. SINDEL:

6 Q. Have you had an opportunity to review the
7 various reports that were prepared in connection
8 with your testimony here today?

9 A. To look them over, yes.

10 Q. And when was it that you last looked them
11 over? It was this year, wasn't it?

12 A. Yes.

13 Q. And it was within a couple of weeks,
14 wasn't it?

15 A. Yes.

16 Q. So is it so hard for you to think back a
17 couple of weeks and remember that? Because you're
18 thinking back years, aren't you?

19 A. Yes.

20 Q. You're thinking back decades, aren't you?
21 So I'm just wondering why it is you can't think back
22 less than a week or two weeks ago.

23 A. Because he got me confused, because I just
24 heard Angel. I didn't pay attention to the last
25 name. I thought you were talking about --

1 Q. He got you confused?

2 A. I got confused. I got confused.

3 Q. If I confuse you, let me know. I thought
4 it was a relatively straightforward question.

5 A. No, I'm saying -- because I was listening
6 to the name Angel. Is that what you're talking
7 about?

8 Q. I didn't say a word. I never used the
9 word "Angel." Okay. I never referred to angels in
10 heaven or angels here.

11 A. Okay.

12 Q. I simply asked you when was the last time
13 you met with members of the prosecution team.

14 A. I met on the reports, yes.

15 Q. And you looked over your reports?

16 A. Yes.

17 Q. And did you see anything in those reports
18 that was wrong?

19 A. Not that I could recall.

20 Q. Did you see anything -- I mean, Mr. Cooper
21 here went through a lot of information that you
22 didn't include in those reports; right?

23 A. I just answered what they're asking.

24 Q. Well, I mean, in other words, if they had
25 asked if you knew where Jimmy Hoffa's body was

1 buried, you wouldn't have told them unless they
2 asked you?

3 A. Yeah.

4 Q. Yeah. Okay. So in other words, it's
5 going to be up to them to be able to predict what
6 you know; correct?

7 A. No.

8 Q. Well, I mean, is it going to be up to them
9 to surmise from some major psychiatric or
10 psychological power -- to figure out what's in your
11 mind?

12 A. All I can do is tell them my truth.

13 Q. Why don't you tell them all your truth, if
14 that's what you're doing?

15 A. Okay.

16 Q. Is that what you tell us you're doing?

17 A. Yes.

18 Q. But you didn't mention anything about the
19 matters that Mr. Cooper brought up until March 23,
20 2018; isn't that right?

21 A. Yes.

22 Q. And what happened was, they went through
23 all these different people and all these different
24 names and said: What dirt, what bad things can you
25 say about them; right?

1 A. Not that I recall.

2 Q. Well, did they ask you anything about
3 Mr. Gallegos, Joe Gallegos?

4 A. They asked me questions about anyone from
5 the S.

6 Q. Did they ask you questions about Joe
7 Gallegos?

8 A. Yes.

9 Q. Okay. And had you given them any
10 information before your testimony here today and
11 before your meeting with them on March 23, 2018,
12 that Joe Gallegos got heroin and delivered it to
13 you?

14 A. I didn't say he delivered it to me.

15 Q. You said you got it from him. How is that
16 not delivery?

17 A. I said he got heroin. I didn't say he
18 delivered it to me.

19 Q. You said he gave it to you?

20 A. Yeah, but you act like I went to go score
21 from him or something. No. He used to hit heroin
22 in prison.

23 Q. Well, you never said anything about that
24 at the other interviews that you had, did you?

25 A. I can't recall.

1 Q. When you looked at them, did you say, "Oh,
2 my God, I left this really important information out
3 about this guy who I'm going to be coming into court
4 and testifying about, and you need to know the
5 dirt"? Did you say anything like that?

6 A. No.

7 Q. When you initially joined -- when you were
8 recruited into the SNM, did you know that it was a
9 membership for life?

10 A. Yes, I understand that.

11 Q. They told you that. And is that something
12 that you told the agents when you met with them on
13 February 14, 2017?

14 A. I believe so.

15 Q. Did you feel that the people that you met
16 with had clearly explained the rules to you of the
17 SNM?

18 A. Yes.

19 Q. Did you tell them that you're aware of
20 certain people that were able to walk away from the
21 gang?

22 A. Yeah, if you go Christian, you can.

23 Q. Christian; right?

24 A. That's the only way you can walk away.
25 Other than that is death.

1 Q. All right. Let me see if I can maybe
2 refresh your memory back to February 14, 2017.

3 MR. SINDEL: May I approach, Your Honor?

4 THE COURT: You may.

5 BY MR. SINDEL:

6 Q. Just the one paragraph. You don't have to
7 read the entire document. Did you read it?

8 A. Yes.

9 Q. That's the same report that you reviewed a
10 couple of weeks ago; right?

11 A. I believe so.

12 Q. Well, I mean, I don't want to fool you.
13 Does it have your name and other information on it?

14 A. Yes, sir.

15 Q. And do you recall actually meeting back in
16 February of 2017 with the agents and going through
17 in detail certain things that you now testified here
18 today?

19 A. Going over things, yes, sir.

20 Q. You remember that; right?

21 A. Yes.

22 Q. You remember sitting down a few -- in
23 March of this year and looking through this
24 document?

25 A. Yes, sir.

1 Q. Within about two and a half, three weeks;
2 right?

3 A. Yes, sir.

4 Q. And does that document that you just
5 reviewed indicate that you told them that you were
6 unaware the membership was for life? Does it say
7 that?

8 A. Something like that, but --

9 Q. Well, okay. Do you want to do it again?

10 A. No, that's fine.

11 Q. Does it say that you were unaware that the
12 membership was for life?

13 A. I understand the membership was for life.

14 Q. "Unaware." Do you know what that word
15 means?

16 A. No.

17 Q. It means you didn't know; correct?

18 A. Yes, sir.

19 Q. But you just told this jury that you knew;
20 right?

21 A. Yes, sir.

22 Q. That's not what you said in 2017; right?
23 Right?

24 A. Yes, sir.

25 Q. And that's not what you corrected in March

1 of this year; right?

2 A. May I reread that?

3 Q. Do you want to read it again?

4 A. Yes. My understanding it was --

5 Q. Why don't you just read it aloud this
6 time?

7 A. It's my understanding the whole situation
8 of --

9 Q. I'm just asking you, you just asked me to
10 read it. Have at it.

11 A. That's what it says.

12 Q. That's what it says in there; right?

13 A. Yes, sir.

14 Q. But that's not the words that came out of
15 your mouth here, is it?

16 A. Yes, sir.

17 Q. You also say in there that no one ever sat
18 down and explained to you the rules of the gang?

19 A. Not all rules.

20 Q. When you say "all rules," I'm just not
21 quite sure because I don't think we'll ever know all
22 rules, but did anyone clearly explain to you the
23 rules of the gang?

24 A. The rules that pertain --

25 Q. There is no what? I couldn't hear you.

1 I'm sorry.

2 A. The rules that pertain inside prison, yes.

3 But the rules outside prison, no.

4 Q. Well, you were in prison when you claim
5 you joined the SNM; right?

6 A. Yes, sir.

7 Q. And did you tell them on February 14,
8 2017, that no one ever explained to you the rules?

9 A. I said the rules that were supposed to go
10 from outside to the streets. Not inside the prison.

11 Q. Okay. So you made that clear when you
12 talked to them about the rules?

13 A. I don't think both of us were maybe clear.
14 I probably didn't understand the question.

15 Q. Okay. You don't understand the question.
16 Did you say, "I don't know, I don't understand the
17 question"? Did you say that?

18 A. No.

19 Q. Well, and when you reread this thing on
20 March 23, 2018, did you say, "Wait a minute. You
21 got it wrong there"?

22 A. I could have.

23 Q. You could have?

24 A. Right around there.

25 Q. Did you remember telling them you got it

1 wrong?

2 A. Not that I know of. Not that I recall.

3 Q. And have you had an opportunity since that
4 meeting to review the report that was prepared in
5 connection with that interview? And I think I made
6 a mistake. Sorry. I was talking about March 23.
7 It was March 20th. But we are talking about the
8 same meeting; right?

9 A. Right.

10 Q. So did you tell them, "Look, they did
11 explain the rules to me, but they only explained
12 this set of rules and not that set of rules"?

13 A. I did not say that.

14 Q. So there would be no way for us to really
15 know what you said, because you can change it as you
16 sit there; right? You can change it?

17 A. No.

18 Q. You just did, didn't you?

19 A. How can I change what's in bylaws?

20 Q. Well, then, was it true that no one ever
21 explained to you the rules? Simple question.

22 A. And I answered. I got the rules that
23 were -- that pertain inside the prison walls and not
24 the ones that go when you get out.

25 Q. Did you make that distinction clear to

1 them when you talked to them?

2 A. No, I did not.

3 Q. But you're making that distinction now?

4 A. Yeah, because now you're bringing it --

5 Q. I'm not reading it. You are.

6 A. No, but you're, like, dividing everything
7 up. That's the way I'm taking it.

8 Q. Well, do you remember what was in here
9 when you just read it?

10 A. Yes.

11 Q. Did I divide anything up at all?

12 A. No. But the way you're asking me, that's
13 the way I'm taking it.

14 Q. All right. Well, okay, let's see if we
15 have an understanding. If I confuse you in any of
16 my questions, which I thought were relatively
17 straightforward, make sure you say, "I don't know.
18 I'm just all confused"; right?

19 A. Yes, sir.

20 Q. Now, what part of the question that I
21 asked you about the rules confused you?

22 A. I just thought you were talking about
23 inside prison rules, like what happened inside
24 prison.

25 Q. Well, I didn't say that, though, did I?

1 A. No, but that's what I'm assuming.

2 Q. Please don't assume anything in a question
3 that I ask you. Okay?

4 A. Yes, sir.

5 Q. And if you are going to do that, warn me.

6 A. All right.

7 Q. That would be fair, wouldn't it?

8 A. Yes, sir.

9 Q. Now, you also had said in that same
10 interview that you wanted the brotherhood that was
11 offered to you by membership in the SNM; correct?

12 A. Yes, sir.

13 Q. SNM is not the only, quote, unquote,
14 "prison gang"; right?

15 A. No, sir.

16 Q. When you were on the outside, you wanted
17 the brotherhood of a gang; right?

18 A. Yes, sir.

19 Q. There's a lot of things in terms of it's
20 tough where you grew up, where you needed that
21 brotherhood; correct?

22 A. Yes, sir.

23 Q. You wanted that protection?

24 A. Yes, sir.

25 Q. And you wanted to have friends, people you

1 could trust and rely on?

2 A. Yes, sir.

3 Q. So when you were on the streets, you had
4 one set of people that fulfilled that purpose;
5 right?

6 A. Yes, sir.

7 Q. And when you went into the penitentiary,
8 you had several choices you could make as to who you
9 felt best met those needs.

10 A. Yes, sir.

11 Q. And those needs were brotherhood and
12 protection; right?

13 A. Yes, sir. And then I wanted to go with
14 the power.

15 Q. With the power. Well, the power,
16 basically, is how you get protection, isn't it?

17 A. Yes, sir.

18 Q. In other words, that if you have the
19 ability to stand up for a brother, if a brother is
20 in trouble, that's power; right?

21 A. Yes, sir.

22 Q. And in order to stand up for when a
23 brother was in trouble, you have to be able to
24 convince people not to do it; right?

25 A. Yes, sir.

1 Q. You wanted somebody to be able, I think,
2 to watch your back, you said?

3 A. Yes, sir.

4 Q. And that the members of the SNM Gang
5 provided canteen to people who were in the hole?

6 A. Yes, sir.

7 Q. Now, when you talk about in the hole,
8 that's what --

9 A. In segregation.

10 Q. Don't jump ahead of me here.

11 A. I'm sorry.

12 Q. All right. Is that segregation?

13 A. Yes, sir.

14 Q. When you're in trouble?

15 A. Yes, sir.

16 Q. And are there restrictions on phone calls
17 when you're in segregation?

18 A. It depends what time you're talking about.
19 Because with the times, it changes.

20 Q. When you say timing, from one year to the
21 next? Is that what you're saying?

22 A. Yeah, because sometimes it's the policy.
23 It depends. When I first went to prison, you can
24 use it as much as you can and as much as you want.
25 And then afterwards, you have to start turning in

1 phone slips. And then it went to where you can't
2 use it at all.

3 Q. But even back in the day, you weren't
4 allowed canteen on a regular basis if you were in
5 the hole; right?

6 A. A certain amount.

7 Q. But it was restricted?

8 A. Yes. You couldn't order your limit as you
9 wanted. They had a certain limit for you.

10 Q. In terms of the canteen, that can be
11 relatively important to someone who is in prison;
12 right?

13 A. Yes, sir.

14 Q. Because sometimes you can get extra food
15 and when you're hungry at night?

16 A. Yes, sir.

17 Q. And you can't go to the fridge and get a
18 snack, can you?

19 A. No, sir.

20 Q. So then a lot of people, they'll buy food
21 and other things from -- toiletries from the canteen
22 that they are not provided by the prison?

23 A. Yes, sir.

24 Q. So if you end up in the hole, it's very
25 nice to have those extra things available; correct?

1 A. Yes, sir.

2 Q. And that's one of the things you wanted
3 from whoever, whatever group or gang you joined?

4 A. Yes, sir.

5 Q. And did you tell the agents in the -- when
6 you interviewed with them on February 14, 2017, that
7 belonging to the gang, the SNM, made prison life
8 more comfortable?

9 A. Yes, sir.

10 Q. And was that a true statement?

11 A. Yes, it was.

12 Q. Were you ever in a situation where you had
13 to earn your bones?

14 A. No, because --

15 Q. Is that the answer? No?

16 A. No, sir.

17 Q. The questions that they asked you back on
18 February 14, 2017, about various people that were
19 reported to be members of the SNM, like Archuleta,
20 Dan Dan Sanchez, Gerald Garcia, Mauricio Garcia --
21 you gave them your opinion about them, didn't you?

22 A. What I know of them.

23 Q. When you said Mauricio Varela was a big
24 mouth, was that because you knew him to be a big
25 mouth?

1 A. Yes.

2 Q. And when you said Gerald Garcia was a
3 wannabe, is that because you knew him to be a
4 wannabe?

5 A. Jerry Garcia?

6 Q. A wannabe; he wanted to be bigger than he
7 was?

8 A. Oh, yes.

9 Q. Now, when you made the decision to band
10 with the brotherhood within the SNM, were there
11 other prison gangs you could have pledged allegiance
12 to?

13 A. Yeah, but I wanted to be with the biggest
14 and the baddest.

15 Q. Would it be fair to say that in the
16 particular environment that prison oftentimes has,
17 it was important to be, I think what you called it,
18 cliqued up?

19 A. Yes.

20 Q. And was it the rare and unusual inmate who
21 wasn't cliqued up?

22 A. No, you had your choice to either do it or
23 not.

24 Q. But most of them chose at least some group
25 of people that could be there when they needed them?

1 A. Like what town they're from, yes.

2 Q. Like what town they're from, like --

3 A. Like you have the Burquenos. You've got
4 CTR. You've got Cruces.

5 Q. Echo Park?

6 A. That's all Burque.

7 Q. The Thugs?

8 A. Whatever street gang that's from
9 Albuquerque hangs around with Albuquerque. It's
10 like all the street gangs from Cruces hangs around
11 with Cruces. And it's up to you if you want to
12 clique up to a prison gang.

13 Q. Now, there were some things that were
14 brought up initially in your testimony by
15 Mr. Castellano concerning your prior criminal
16 background; correct?

17 A. Yes.

18 Q. And if I heard it right, virtually
19 everything you did you had an excuse for. When you
20 shot that guy in the back of the head, it was
21 because he pushed your girlfriend to the ground; is
22 that right?

23 A. Not my girlfriend.

24 Q. A woman, a friend?

25 A. Yes. A friend of mine.

1 Q. A friend of yours? And so you leveled
2 your pistol at him and you blew his brains out.

3 A. Yeah. It was no excuse.

4 Q. But it was his fault, wasn't it? He had
5 no reason to push that girl down; right?

6 A. No.

7 Q. So you were really acting in defense of
8 this young woman?

9 A. Yes, sir.

10 Q. And when he was running away from you, you
11 leveled your gun and blew his brains out because you
12 were acting in defense of this poor, helpless girl;
13 right?

14 A. No, I went over there, and just things
15 went wrong.

16 Q. Things went wrong?

17 A. Yes, sir.

18 Q. Well, you're sitting there alive and well,
19 and that guy is six feet underground. How do you
20 think he feels about what went wrong?

21 A. I understand that. And that's why I went
22 to prison.

23 Q. And so you were at the house burglarizing
24 it; right? Right?

25 A. Yes, sir.

1 Q. You broke in, you were stealing stuff;
2 right?

3 A. Yes, sir.

4 Q. And this guy's father came and found you;
5 right?

6 A. Yes, sir.

7 Q. And he tried to stop you; right?

8 A. Yes, sir.

9 Q. And then somehow or another, this girl got
10 knocked down and then you had to defend her. What
11 weapon did he have?

12 A. I don't know. I wasn't thinking -- or I
13 didn't see any, anyway.

14 Q. Well, what weapon did you see him use?

15 A. His fist.

16 Q. His fist. When he knocked her down?

17 A. When he grabbed her. He grabbed her.

18 Q. I mean, I don't think people grab people
19 with fists, do they?

20 A. He went like that and grabbed her.

21 Q. Was she in the house, too?

22 A. No.

23 Q. Where was she?

24 A. She was on the steps.

25 Q. Lookout?

1 A. No, she just got down. She wasn't a
2 lookout.

3 Q. I mean, was she just there by accident,
4 then?

5 A. No, she just --

6 Q. I thought she was a friend of yours.

7 A. She is a friend of mine, but --

8 Q. She knew you were in there burglarizing;
9 right?

10 A. She didn't know what we were going to do.

11 Q. Well, how did you get into this place?
12 You just happened to open the door and there you
13 were?

14 A. No, all of a sudden, my friend is the one
15 that kicked in the door.

16 Q. Okay, wait. Your friend, now. You didn't
17 do it?

18 A. I didn't do it.

19 Q. He did it; right? Someone else?

20 A. He's the one that kicked in the door.

21 Q. Was she there when he kicked in the door?

22 A. I think she was coming up the stairs then.

23 Q. You mean the stairs that lead to the front
24 door?

25 A. No, the stairs to the apartments to go up

1 on the top.

2 Q. So did she -- when this guy kicked in the
3 door, was she aware that the door had been kicked in
4 at any time, or do you know?

5 A. Not that I know of.

6 Q. All right. So were you guys then
7 rummaging inside the apartment gathering goodies and
8 stealing stuff, yes?

9 A. Yes.

10 Q. And did she know that you were in this
11 apartment with a busted door?

12 A. She didn't know nothing. She didn't know.

13 Q. She didn't know. Did you give her any
14 idea why it was that you were going in there to this
15 strange apartment?

16 A. No, because for her -- well, for us, we
17 were going to go get something to eat. When we
18 passed by, that's when I seen the guy in the alley.
19 That's why I told him, "Stop."

20 Q. Well, I suppose if you were getting
21 something to eat, you made straightaway for the
22 refrigerator; right?

23 A. Yeah.

24 Q. So what did you take to eat from the
25 refrigerator?

1 A. Nothing.

2 Q. You weren't in there to get something to
3 eat at all, were you?

4 MR. CASTELLANO: At this point, Your
5 Honor, I'm going to object to relevance.

6 MR. SINDEL: They were the ones that
7 brought it up.

8 THE COURT: Well, there has been some
9 detail. I'll allow Mr. Sindel some leeway on this.
10 Overruled.

11 BY MR. SINDEL:

12 Q. You were in there to steal, weren't you?

13 A. Yes.

14 Q. And you told everyone here it was because
15 this guy was intruding upon your territory, selling
16 drugs into your territory, but you went in there to
17 steal, didn't you?

18 A. Yes.

19 Q. Because he wasn't going to get any message
20 that, you know, you burglarized my dad's place; you
21 better not be selling drugs in our area, in our
22 territory; right?

23 A. Yes.

24 Q. And that was really the case that really
25 put you into a bad situation?

1 A. Yes, I went to prison.

2 Q. But there was this other case that you
3 discussed about intimidation of a witness; right?

4 A. Yes.

5 Q. And I was trying to do too many things,
6 but I thought you said it had something to do with
7 seeing or visiting with your daughter.

8 A. Yes.

9 Q. You wanted to be as good a dad as you
10 could?

11 A. Yes.

12 Q. So you wanted to see your daughter, but is
13 it your wife or your girlfriend or former friend?

14 A. It was my girlfriend.

15 Q. Girlfriend?

16 A. Well, ex-girlfriend at the time.

17 Q. What?

18 A. Ex-girlfriend at the time.

19 Q. Ex-girlfriend. For some crazy reason, she
20 didn't want you around her daughter; right?

21 A. No.

22 Q. Did she know you were involved in drugs?

23 A. Yes.

24 Q. Did she know that you were involved and
25 carried a weapon frequently, that you could use it?

1 A. Yes.

2 Q. Did she know that you were engaged in
3 criminal activity?

4 A. Yes.

5 Q. And the reason you went over there is
6 because you wanted to see your daughter, and she
7 wouldn't let you; right?

8 A. You got it backwards. I had already got
9 my daughter. I had custody of her, and --

10 Q. Well, as I understood it -- you stop me,
11 if I'm wrong; that's okay. You had some paperwork a
12 lawyer prepared?

13 A. Yes.

14 Q. And had a judge signed on that paperwork
15 giving you legal authority to go over there and take
16 your daughter?

17 A. I didn't take her. She brought her to me.
18 She let me spend time with her, and that's when I
19 took her to the lawyer's office.

20 Q. Took who? Your daughter to the lawyer's
21 office?

22 A. Yes.

23 Q. And where did this bribery come in?

24 A. Well, what happened was, they tried to
25 come get my daughter back.

1 Q. Who is "they"?

2 A. My ex-girlfriend and her mom. They came
3 to my house to pick up my daughter. I was like,
4 "No." I gave them the papers. They called APD.
5 APD came in, and he read the papers. He's, like,
6 "It's already in the courts. I can't do nothing."

7 They tried to say that I was out on bond
8 for murder. The cops even told them, "It's already
9 in the Court's hands. We can't do nothing."

10 Q. So then at least as I understand you're
11 explaining it, you didn't do anything wrong.

12 A. No, I was out on bond. I did something
13 wrong. That's why I went to prison.

14 Q. Well, I know the murder was wrong. That's
15 real obvious. But I'm just trying to figure out,
16 you know, if they brought the daughter to you and
17 the police came and said, "There is nothing we can
18 do, he has the right to have his daughter, because
19 of this paper that his lawyer drew up," why is it
20 that you ended up pleading guilty to a crime of
21 intimidating a witness?

22 A. Because it was all part of my plea
23 bargain.

24 Q. I mean, I understand that you did a plea
25 bargain in which they lumped these criminal

1 activities together, but you knew you had the
2 option, from talking to your lawyer, of taking that
3 case to trial; right?

4 A. Yes.

5 Q. You knew you had the option of saying,
6 "I'm sorry, but I don't think I did anything illegal
7 here. I would like to go and have my day in court";
8 right?

9 A. Yes.

10 Q. But instead you ended up standing in front
11 of a judge telling him that, "Yes, I intimidated
12 this witness"; right?

13 A. Yes, sir.

14 Q. But it didn't really happen that way, did
15 it?

16 A. No.

17 Q. Do you know Mario Rodriguez?

18 A. I heard of him.

19 Q. You don't know him?

20 A. I just, like -- I know him from prison.
21 But I mean, I never spent time with him.

22 Q. I mean, did you spend time with him in
23 prison?

24 A. No.

25 Q. So he didn't school you on anything about

1 how to avoid responsibility for your criminal acts?

2 A. No.

3 Q. Is it true that on February 14, 2007, you
4 told the agents that talked with you that the SNM
5 was washed up?

6 A. Yes, I told them that.

7 Q. And that no one fears them anymore?

8 A. Like I said, you --

9 Q. Is that what you told them?

10 A. Certain ones, yes, you fear.

11 Q. Did you tell them that no one fears the S
12 anymore?

13 A. Are you talking about other gangs? Other
14 gangs, no.

15 Q. As I understand it, you were in the hole
16 or in segregation on March 26, 2001?

17 A. Yes.

18 Q. You were in there on March 25, 2001, as
19 well?

20 A. Yes.

21 Q. So in terms of anything that happened in
22 any one of the pods in which the various members,
23 SNM members, you don't know specifically what
24 happened there on those two days?

25 A. No. All I could do --

1 Q. I'm asking what you know. You don't know
2 anything; correct?

3 Now, there was a photograph, a group
4 photo, that you were shown; right?

5 A. Yes.

6 Q. It had everybody's names on it?

7 A. Yes.

8 Q. And in those group photos, is it normal
9 for those group photos to be taken -- is it
10 something that happens within the institution that,
11 hey, are these the guys that I'm living with?

12 A. We take pictures, yes.

13 Q. Sometimes you write your family, and I'm
14 saying, you know, "I'm living with so-and-so from
15 the neighborhood or in that general area"; right?

16 A. Yes.

17 Q. So you can send them these photos and say,
18 "These are the guys I'm living with"?

19 A. Yeah, but you want to take pictures with
20 everybody you live with.

21 Q. Well, you can't take pictures with
22 everybody, can you?

23 A. Whoever is all in the 1s, you take
24 pictures, of who all is in the 1s.

25 Q. All in the same pod; in the same pod as

1 you; right?

2 A. Everybody in the same pod as you.

3 Q. But in other words, if you're going to
4 take a group photo of the people you hang with, it's
5 going to be the people in the pod; correct?

6 A. Not necessarily.

7 Q. Well, can you go out to the institution
8 and pick various people that you want to be in the
9 group photo?

10 A. As long as they're in the 1s and go
11 outside to rec with you, you can.

12 Q. But in the pods, that's where they take
13 the photos most of the time, isn't it?

14 A. In that pod, it was right there in the
15 handball court, if you look at that picture. It's
16 not in the pod.

17 Q. Are those the people you lived with in the
18 pod?

19 A. No.

20 Q. None of those people?

21 A. The only one I lived with was David
22 Calbert. But I don't know exactly what date that
23 was, because I know he was living in P-2 at the
24 time, too. And one of the --

25 Q. So that particular photo, you could pick

1 people out of the recreation yard and take
2 photographs with them? Is that what you're telling
3 us?

4 A. Yes, sir.

5 Q. And that's what happened there?

6 A. Yes, sir.

7 Q. Now, the other thing I wanted to ask you
8 about -- and we can open up a new subject matter --
9 is there a possible sentence on the case that you
10 now have?

11 A. A possible sentence?

12 Q. Yeah. For possession of a firearm.

13 A. Yes, sir.

14 Q. Did you tell the probation officer you
15 wanted that firearm in order to get even with
16 somebody from Brewtown?

17 A. No. What happened was --

18 Q. I just asked you that question. You've
19 answered that.

20 Have you had an opportunity to review the
21 presentence report that was prepared in connection
22 with your case?

23 A. Yeah.

24 Q. And when they have that opportunity, you
25 can say basically, "Wait a minute, wait a minute, I

1 didn't ever say that. That's not accurate"; right?

2 A. Yes, sir.

3 Q. And did you at any time ask your lawyer to
4 file any sort of documents or paperwork to indicate,
5 "Look, what they're saying here is not accurate"?

6 A. No, sir.

7 Q. So -- and you were aware, were you not,
8 that the probation officer said, "Look, he told me
9 he wanted that gun to get even"?

10 A. Yes, sir.

11 Q. Because you did tell her that, didn't you?
12 You wanted to get even with somebody. You wanted
13 that gun to use that gun to cut someone down on the
14 streets, didn't you?

15 A. No, sir.

16 Q. Somebody from Brewtown?

17 A. No, sir.

18 Q. To get even?

19 A. No, sir.

20 Q. Were you going to get even by just showing
21 them the gun?

22 A. No.

23 THE COURT: Mr. Sindel, would this be a
24 good place for us to close for the evening?

25 MR. SINDEL: It would, Your Honor.

1 THE COURT: All right. We'll break for
2 the evening. I appreciate your hard work and I
3 appreciate all you're doing for us. See you at 8:30
4 in the morning.

5 All rise. I wish I could tell the missile
6 range not to fire any missiles, but I don't have
7 that authority over there. So be safe.

8 (The jury left the courtroom.)

9 MR. SINDEL: Your Honor, if I may ask that
10 you admonish the witness.

11 THE COURT: All right. You're in the
12 middle of cross-examination, so don't talk to any
13 lawyers or any other witnesses or anybody about your
14 testimony. Okay?

15 THE WITNESS: All right.

16 THE COURT: Anything else you want me to
17 think about tonight, do, work on, for the
18 Government?

19 MR. SINDEL: We're going to try to find
20 out whether a correctional officer is law
21 enforcement.

22 THE COURT: Okay.

23 MR. SINDEL: And I'll bring that to you in
24 the morning. And somebody who knows the law.

25 THE COURT: All right.

1 MS. TORRACO: I did file a motion
2 regarding keeping out evidence on Frankie.

3 THE COURT: About Frankie?

4 MS. TORRACO: I filed a motion to exclude
5 on that.

6 THE COURT: All right. I'll take a look
7 at that.

8 MS. TORRACO: Thank you, sir.

9 THE COURT: All right. Have a good
10 evening.

11

12

13 April 19, 2018

14

15 THE COURT: Good morning, everyone. I
16 appreciate everybody being here ready to go and on
17 time. I appreciate the way y'all have gone about
18 your tasks over the last couple of weeks.

19 Mr. Sindel, I think you indicated that you
20 had something to raise with the Court this morning?

21 MR. SINDEL: Yes, Your Honor.

22 THE COURT: Mr. Sindel.

23 MR. SINDEL: Thank you for allowing me to
24 talk, Your Honor. I do believe that there will be a
25 number of the other attorneys who may want to

1 comment on a particularly disturbing event that
2 occurred yesterday that sort of reminds us of the
3 circumstances in the first trial surrounding
4 Mr. Garcia, James Garcia, also known as Daffy.

5 Around 4:20 yesterday we were given some
6 notes that were prepared of a debrief by Agent
7 Sainato and Mr. Beck and others of a guy named
8 Michael Jaramillo. And you know, basically prior to
9 this, his DNA had been discovered or at least
10 suspected in the situation involving Count 1. And
11 we have received a handwritten note -- we don't have
12 a 302; we don't have any other real material on
13 this -- that Mr. Jaramillo is going to basically
14 tell this jury, if he's allowed to testify, that he
15 is the one who strangled Mr. Castillo, that he was
16 in the cell at the time, and he was there with my
17 client, Mr. Gallegos.

18 This is a total shock. It completely
19 changes how we would have presented our defense. I
20 have not had an opportunity to talk with my client
21 in depth about this because of the trial schedules
22 and things like this. In fact, I didn't even get a
23 chance to review the handwritten materials we
24 received until after court yesterday. We would have
25 had a completely different voir dire approach on

1 this particular case. He would have been mentioned.
2 He would have been -- we would have talked to the
3 jury about the fact that there was an individual who
4 was directly -- or claimed to be directly involved
5 in the Castillo homicide. We would have had
6 opportunities to investigate the matter further, to
7 get background information on Mr. Jaramillo. Our
8 opening statements would have definitely mentioned
9 him. And it would have been something that we would
10 have cross-examined Agent Acee and a number of other
11 individuals involved, because this is brand-new.

12 THE COURT: Well, let me -- I'm thinking
13 here.

14 MR. SINDEL: So am I.

15 THE COURT: Michael Jaramillo. Was he on
16 everybody's witness list, or a witness list?

17 MR. SINDEL: I don't believe -- he was
18 mentioned Monday. This was the individual they
19 identified in court as being part of the -- they
20 asked for a warrant because they were concerned that
21 he wasn't going to show up. I know he wasn't on our
22 witness list.

23 THE COURT: But he was on theirs?

24 MR. SINDEL: I have not committed the
25 Government's witness list to memory.

1 THE COURT: Had you had other 302s on him?

2 MR. SINDEL: No, not that I'm aware of.

3 THE COURT: This is the first 302 on --

4 MR. SINDEL: It's not even a 302 at this
5 time. It's just a set of handwritten notes.

6 THE COURT: When did this interview take
7 place?

8 MR. SINDEL: April 18.

9 THE COURT: Yesterday.

10 MR. SINDEL: Yesterday. And the other
11 thing is, I mean, kind of consistent with this whole
12 thing is that, you know, we received yesterday a 302
13 on Mr. Gonzales, you know, while he was on the
14 witness stand. We just are in a situation where we
15 cannot address these issues appropriately. We
16 cannot function and prepare a defense with all this
17 late-breaking discovery. And you know, the
18 discovery concerning Jaramillo is --

19 THE COURT: Now, is this Michael Jaramillo
20 the one that -- I know there's a couple people that
21 have this nickname, but is it Criminal?

22 MR. SINDEL: That's his nickname, as I
23 understand it.

24 THE COURT: Well, he's on the James
25 notice, because I dealt with Criminal in the James

1 notice. So I think the chart that I've done -- I'd
2 have to go back -- there's 88 statements there, but
3 I think we have dealt with statements that he was
4 going to make.

5 MR. SINDEL: I have not reviewed it. I
6 would have to go back and review that chart myself.
7 I think there, you know, would need to be a James
8 hearing in connection with any testimony that he was
9 to offer.

10 THE COURT: I think we had it. That's the
11 reason that I think -- this is my memory from --

12 MR. SINDEL: I'm not --

13 THE COURT: I think we had a James hearing
14 on Criminal, because there was another fellow named
15 Criminal that was Kevin Folse. And I had to be
16 instructed that this is a new Criminal, and that
17 then I think I sorted this out on the chart.

18 MR. SINDEL: I don't feel comfortable
19 commenting on that at this point.

20 THE COURT: And I'd have to go back and
21 look at it, too.

22 MR. SINDEL: Nonetheless, it would be a
23 situation where there's a lot of investigation that
24 we would have to do. For example, I don't feel in
25 any sense prepared to cross-examine Mr. Lujan, which

1 the Government has indicated they're going to call,
2 because Mr. Jaramillo's testimony and his statement
3 is in many ways contradictory of that, and it would
4 have to be something that I would have to absorb. I
5 don't feel I can provide my client with effective
6 cross-examination of Mr. Lujan without actually
7 learning more about these particular circumstances.

8 THE COURT: Educate me: How are Lujan and
9 Jaramillo -- how would their examinations be
10 related?

11 MR. SINDEL: Well, Lujan would testify
12 concerning certain people that he, you know, brought
13 into the mix in order to accomplish the task that he
14 claims that Garcia had delegated to him. And all of
15 a sudden, right now, we're under the situation where
16 Jaramillo is saying basically, "Yeah, I went in
17 there and I did what they said Torres did." Torres
18 would testify, as far as my client, you know, the
19 idea was that Mr. Gallegos was supposedly the one
20 who strangled Mr. Castillo. But that's not
21 according to what Mr. Jaramillo says. I'm just
22 trying to tell the Court --

23 THE COURT: Isn't that a good development,
24 though, for you?

25 MR. SINDEL: Well, I don't think that

1 anybody who says that our client participated in a
2 homicide, whether it was as the strangler or
3 something else, is going to be a good development
4 for us. We had -- an investigator for our team had
5 gone out and talked to Mr. Jaramillo, and he said he
6 didn't know anything about it. So this is a
7 complete surprise, and it is something that I think
8 that affects the entire tenor of what we would
9 anticipate having presented to the jury, and we
10 can't go back and do it again. And we can't go back
11 and do it again, because of this late-breaking
12 disclosure. And there could have been an
13 investigation of this individual months ago. And
14 the process -- there is no -- in the criminal field
15 there is no discovery cutoff, but there needs to be
16 at least some perception from the Court, an
17 understanding from the Court, you know, that we're
18 here; and Mr. Beck and the other AUSAs, they can
19 leave at some times and do investigation. We
20 cannot. We're sort of stuck here, trying to do it.

21 Last night we met, and you know, we kind
22 of, like, all threw up our hands as to what we were
23 going to do, how we could handle this. And we
24 believe that we need an opportunity to present legal
25 argument, case law, and things like that that will

1 support our particular position. We just don't have
2 the resources to go out and do that, you know, while
3 we're in trial every day.

4 So I am -- you know, like I said before, I
5 feel totally at a loss in trying to cross-examine
6 Mr. Lujan, because the entire focus of my
7 cross-examination has now shifted and changed. And
8 I don't want to have a situation where I'm trying to
9 wing it with a witness. There's probably -- I have
10 two gigantic notebooks of materials that surround
11 the history of Mr. Lujan that I have to review in
12 light of this new development, and I just can't do
13 it.

14 THE COURT: Well, let me -- I'll hear from
15 anybody that wants to talk, but let me hear from the
16 Government so I know what the dispute is and where
17 we're going.

18 Thank you, Mr. Sindel.

19 Mr. Beck, is Mr. Lujan a witness today?

20 MR. BECK: He is, Your Honor.

21 THE COURT: Is that the problem?

22 MR. BECK: Yes. And if I may have the
23 Elmo.

24 THE COURT: Is he who you're intending to
25 call after Gonzales?

1 MR. BECK: I think there is one CO in
2 between. But one of the principal documents that
3 we've gone over multiple times in court is
4 Mr. Lujan's August 8, 2007, interview, that's a
5 recording of it, that was -- well, we debated
6 whether it was going to be played in opening by
7 Mr. Gallegos. I think Mr. Gallegos ran out of time,
8 so this was something that he did not play in
9 opening, but he intended to. And he intended to
10 play the portion that's Bates No. 274. And this is
11 where Mr. Lujan is saying Rich Lewis, the APD
12 investigator, asked him concerning Mr. Castillo,
13 "Who did you speak to about that?"

14 "I talked to Joe, Joe Castillo, Joe
15 Castillo from Belen, Criminal. I don't know his
16 name, but his name is Criminal. And then Angel, a
17 little dark-complected guy. These three. I talked
18 to these three at the time, K, in front of the K
19 units. They were there. Castillo -- had a
20 discussion with Castillo, he says.

21 And this is why Frankie G is going to be
22 an element in this trial, because then he says that
23 Castillo, Joe Castillo, is Frankie G's brother.
24 They're both the ones in Los Lunas. So that's why
25 Frankie G was going to be part of this, because

1 that's how he recognizes it is indeed Joe Gallegos
2 he talked to.

3 So from the beginning of this case -- and
4 we talked about Bates No. 60,000 pages and the Court
5 has seen this document many times, Criminal was
6 involved. I mean, again here. "Okay, Criminal --
7 do you know where Criminal is from?"

8 "Criminal -- I know he's from Albuquerque,
9 but I don't know exactly what gang."

10 "Is he SNM?"

11 "Yeah. And the reason Criminal got
12 involved is that because he was right there, but
13 apparently there was paperwork on him. But they
14 were going to give him a pass, and that was his
15 pass."

16 THE COURT: What is the new development?
17 What occurred yesterday that is new?

18 MR. BECK: The new development is that
19 this is the first time that Criminal, Mr. Jaramillo,
20 was at all cooperative or forthright with anyone
21 that came and talked to him. And Mr. Jaramillo,
22 Criminal, yesterday said: "When I spoke to law
23 enforcement, they said -- I told them I didn't know
24 anything. When I spoke to law enforcement again, a
25 couple years later, said I didn't know anything.

1 Mr. Gallegos' investigator came to my house about a
2 year and a half ago; I said I didn't know anything.
3 When the FBI came and knocked on my door and wanted
4 me to participate in this trial, I said I didn't
5 know anything. Then I got a subpoena. I had to
6 show up" --

7 THE COURT: Who subpoenaed him?

8 MR. BECK: The United States. He's been
9 one of our witnesses, because -- we read over
10 that -- Mr. Lujan has remained consistent that he
11 told Criminal; Criminal was involved. And so our
12 intention was to subpoena him, with the
13 expectation -- and that's why I asked the Court to
14 appoint him a lawyer. That's why the Court
15 appointed him a lawyer, because I was concerned that
16 when I put him on the stand with the subpoena, we
17 were going to get into a similar situation to what
18 happened a few weeks ago with Mr. Garcia.

19 THE COURT: Is he on your witness list?

20 MR. BECK: Yes.

21 THE COURT: Can you show me that?

22 MR. BECK: I don't have a copy now, but he
23 is.

24 THE COURT: Well, I don't see it on any
25 witness list.

1 MR. CASTLE: It's Docket No. 11968, and
2 he's not on it.

3 MS. HARBOUR-VALDEZ: He's not.

4 THE COURT: I don't think he's on your
5 witness list.

6 MR. BECK: That would be news to me. I
7 read out his name, I remember in voir dire, listing
8 him out as a witness, because I think Special Agent
9 Acee handed me a sticky note with his name. And I
10 guess that's why, because I guess he wasn't on our
11 witness list. But we intended to put him on the
12 stand and use him, with the expectation that if I
13 asked him whether he was in SNM, he would say yes,
14 or he would say -- he would invoke his Fifth.

15 THE COURT: Well, let's do this: I think
16 Lujan, we won't call today. You'll have to push him
17 down and figure out somebody else to get here.
18 Because you've got a problem in the sense that
19 Mr. Jaramillo is not on your witness list. And
20 they've got a problem because we got a new 302 with
21 a witness here that has got some information. So
22 get somebody else here, and push Lujan down until
23 they get some time to absorb this information and we
24 figure out how you're going to get Jaramillo into
25 the case and testify. Okay?

1 MR. BECK: Okay.

2 THE COURT: All right.

3 MR. SINDEL: I know that Mr. Burke would
4 like to be heard.

5 THE COURT: Well, let's do this: We've
6 got a witness --

7 MR. SINDEL: I know. May I bring up one
8 other really small matter? All right. And that was
9 yesterday there was a reference to a Gonzales search
10 warrant in the arrest complaint. I have been unable
11 to find it, nor has Mr. Benjamin, in any of the
12 discovery. We sent an email to the Government
13 asking them if they could tell us where to find
14 that. I'd like to be able to review that before I
15 conclude my cross-examination. I don't want to
16 delay it any further. I don't have much else to do.
17 But I specifically don't know. And I think it may
18 have -- and there are certain statements that he has
19 made to investigators that might be appropriate
20 fodder for cross-examination.

21 THE COURT: There was a reference to a
22 Gonzales search warrant in the arrest complaint?
23 Tell me -- I don't understand that.

24 MR. SINDEL: There was -- I believe within
25 the complaint that was filed against him, there was

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1 a reference in that complaint to a search warrant,
2 and I believe, if my memory is right, December 1,
3 2016, and we have been unable to find it.

4 THE COURT: Do you know anything about
5 that, Mr. Beck or Mr. Castellano?

6 MR. CASTELLANO: Yes, Your Honor. At the
7 request of the defense, that was emailed this
8 morning.

9 THE COURT: Okay.

10 MR. SINDEL: I haven't looked at it yet.
11 There are a lot of shifting sands here.

12 THE COURT: All right. Go ahead,
13 Mr. Burke.

14 MR. BURKE: Your Honor, I am beseeching
15 the Court to not understate the nature of this sea
16 change in the case. I know the jury is here. I
17 know how hard you have worked, and your staff has
18 worked. But this is different. This is a different
19 trial by ambush tactic. This changes everything as
20 to Count 1.

21 THE COURT: Well, I think we're okay on
22 Gonzales. Let's get Gonzales in here and do our
23 work on him.

24 MR. BURKE: Okay.

25 THE COURT: Take a deep breath. The

1 Government is not going to call Lujan today. And
2 y'all, you know, will get a chance to absorb it, and
3 the Government is going to have to figure out how
4 we're going to work Jaramillo into this case. So
5 I'll --

6 MR. BURKE: Well, okay.

7 THE COURT: -- I'll listen to you.

8 MR. BURKE: I understand.

9 I believe Count 1 needs to be dismissed
10 now. Not later. Now.

11 THE COURT: Okay. Well, I probably am not
12 going to do anything that quickly right at the
13 moment.

14 All right, all rise.

15 (The jury entered the courtroom.)

16 THE COURT: All right. Everyone be
17 seated. Good morning, ladies and gentlemen. Sorry
18 to keep you waiting a little bit there, but we had
19 some things to discuss. Everybody was here on time;
20 it's not them. It's me listening to some stuff that
21 I needed to hear this morning. So I appreciate you
22 being here and on time, and sorry you had to wait a
23 little bit.

24 I guess we're going to see more winds
25 today and more missiles tomorrow. So it looks like

1 it's life in New Mexico. But thank you for the way
2 you've gone about your task. You've been great New
3 Mexicans. And I think the parties and counsel all
4 appreciate it very much.

5 All right. Mr. Gonzales, I'll remind you
6 that you're still under oath.

7 Mr. Sindel, if you wish to continue your
8 cross-examination of Mr. Gonzales, you may do so at
9 this time.

10 MR. SINDEL: Thank you, Your Honor.

11 THE COURT: Mr. Sindel.

12 PHILLIP GONZALES,
13 after having been previously duly sworn under
14 oath, was questioned and continued testifying as
15 follows:

16 CROSS-EXAMINATION (Continued)

17 BY MR. SINDEL:

18 Q. Good morning, Mr. Gonzales.

19 A. Good morning.

20 Q. Yesterday I referred a number of times to
21 the last time you met with the representatives of
22 the US Government. Do you recall that?

23 A. Yes, sir.

24 Q. And when I talked about the date, I think
25 I initially said March 23, but then I changed it to

1 March 20; is that right?

2 A. Yes, sir.

3 Q. That wasn't the last time you met with
4 them, was it?

5 A. I know I met with them a few times.

6 Q. That wasn't the last time you met with
7 them?

8 A. No.

9 Q. When was the last time?

10 A. I can't recall. I know I met with them.

11 Q. Do you think it was within the last month?

12 A. No.

13 Q. Was it within the last two months?

14 A. It's been a while since I met with them.

15 Q. If it was March 20 the last time, it would
16 definitely be within a month; correct?

17 A. Yes.

18 Q. How about April 15? Did you meet with
19 them on April 15, with Randy Castellano, with Agent
20 Joseph Sainato?

21 A. Yes.

22 Q. That was three days before you took the
23 witness stand yesterday; correct? It was the Sunday
24 before you walked in this courtroom.

25 A. Yes.

1 Q. And you didn't mention that at all, did
2 you?

3 A. No.

4 Q. I think in one of the times that you met
5 with the Government, you indicated that at one point
6 in time the SNM was best known for their numbers.
7 Do you recall that?

8 A. Yes.

9 Q. But you also said that their numbers were
10 dwindling and they're no longer as powerful or even
11 near as a powerful as they once were; correct?

12 A. Correct.

13 Q. And I think you also told them that you
14 didn't want to hang with Chris Garcia because he was
15 an informant.

16 A. That's correct.

17 Q. And part of the issue about hanging with
18 an informant is you never know when they may take
19 something you say and twist it so they can use it to
20 their advantage; right?

21 A. Yes.

22 Q. And they may end up just lying about their
23 contacts with you? That's what an informant does in
24 order to get favors; correct?

25 A. Correct.

1 Q. And they want to get time cuts or money or
2 whatever it may be. But you can't trust them to be
3 around you because you know they will lie to get
4 something?

5 A. That's why it's paperwork, and that's why
6 it's the detective's job to do their job.

7 Q. Because you know that they will lie if
8 it's to their advantage; correct?

9 A. I don't see about lying. I know --

10 Q. You don't think informants lie?

11 A. I don't know. I've never been one.

12 Q. You didn't hang out with Chris Garcia
13 because you were worried that he might lie?

14 A. I didn't hang around with him. I just
15 known him. And I knew that there was paperwork on
16 him.

17 Q. But you told the agents you didn't want to
18 hang out with him because he's a informant; right?

19 A. Yeah.

20 Q. Now, was there a time when the Government
21 searched your residence pursuant to a search
22 warrant?

23 A. Yes, sir.

24 Q. And was there a time when you had
25 indicated to the agents that the reason that you

1 wanted to get the gun was to get even with members
2 of the Brewtown Gang?

3 A. Yes, sir.

4 Q. That's correct?

5 MR. SINDEL: Your Honor, I'm done with
6 this witness for now. But it's my understanding
7 that I will receive some additional information from
8 the Government, which I have not reviewed. So I'd
9 ask this witness be subject to recall, if possible.

10 THE COURT: All right. We'll not excuse
11 him. All right. Does any other defendant -- Mr.
12 Solis, do you have cross-examination of Mr.
13 Gonzales?

14 MR. SOLIS: I do, Your Honor.

15 THE COURT: Mr. Solis.

16 MR. SOLIS: Hopefully not too long. Thank
17 you.

18 CROSS-EXAMINATION

19 BY MR. SOLIS:

20 Q. Mr. Gonzales, good morning.

21 A. Good morning.

22 Q. My name is Eduardo Solis. I'm one of the
23 defense counsel here, sir.

24 Is your name Felipe or Phillip?

25 A. Phillip.

1 Q. Phillip. And you grew up in Albuquerque?

2 A. Yes, sir.

3 Q. Do you have siblings?

4 A. Yes.

5 Q. How many siblings do you have, sir?

6 MR. CASTELLANO: Your Honor, I'll object
7 to the personal question asked of the witnesses.

8 MR. SOLIS: Your Honor, it's just simply
9 background questions.

10 THE COURT: We've got some familial issues
11 here. Overruled. I'll allow the question.

12 MR. SOLIS: Thank you.

13 BY MR. SOLIS:

14 Q. I'm not going to inquire what their names
15 are or anything like that. I'd like to know if you
16 have brothers and sisters.

17 A. Yes.

18 Q. How many total?

19 A. I've got two.

20 Q. Two brothers?

21 A. Yes.

22 Q. Where are you in the order?

23 A. In the middle.

24 Q. In the middle. How old are you, sir?

25 A. I'm going to be 40.

1 Q. 40. All right. And you grew up with mom
2 and dad, brothers and sisters?

3 A. Yes, sir.

4 Q. In your household, was Spanish your first
5 language?

6 A. No, English.

7 Q. The reason I ask is because I actually
8 grew up with guys like you. In my household, it
9 was -- Spanish was predominantly the language. My
10 siblings and I grew up speaking Spanish. We learned
11 English watching television. And the guys that grow
12 up with -- that were like you -- I'm from El Paso --
13 they ended up being with a different group of those
14 that -- not all my friends or associates growing up
15 were like Barrio Aztecas, but they ended up being
16 that. Do you kind of follow what I'm saying?

17 A. Yes, sir.

18 Q. The reason I'm getting back into this is
19 because you mentioned yesterday on direct
20 examination that there was an incident where you
21 were not yet SNM, yet you weren't going to bow down.

22 A. No, I wasn't.

23 Q. Right?

24 A. Yes, sir.

25 Q. And that's just kind of like, if you feel

1 that you're either being -- I think you used the
2 words -- was it mad-dogging, or --

3 A. Yes.

4 Q. -- stare down, or something like that;
5 right?

6 A. Yes, sir.

7 Q. And that just doesn't fly; right? I mean,
8 that's what I recall, and that's what you recall?

9 A. Yes, sir. That's why my cousin called me
10 to the door and said, "What are you doing?"

11 Q. Yeah. And so although not yet an SNM
12 member, you're not going to bow down to this; that's
13 not the way it works?

14 A. Yeah. But I didn't know, like, how the
15 system worked. You know what I mean, I'm barely 19
16 in prison.

17 Q. And that could happen also at the --
18 again, I'm not from Albuquerque, but I think it's
19 the MDC now?

20 A. Yes.

21 Q. And before, was it the BCDC?

22 A. Yes, sir.

23 Q. That's basically the county lockup?

24 A. Yes.

25 Q. That could happen there, too; right? You

1 could get challenged, there's a stare-down, and
2 there's alpha males, and you can't bow down?

3 A. Yes, sir.

4 Q. That's right. And so one doesn't have to
5 be an SNM member to say, "Look, you're not going to
6 disrespect me, and I'm not going to take that.
7 You're not going to challenge me that way." Because
8 if you're any in any way a man -- I mean, a member
9 of the male species, a man, that's not going to fly;
10 about right?

11 A. Yes, sir.

12 Q. You also talked about -- the other thing
13 you talked about was wannabes. This was later on in
14 your examination, you talked about wannabes. And I
15 guess wannabes are people who want to appear bigger,
16 better, more important than they really are; is that
17 your --

18 A. Yes.

19 Q. -- definition?

20 A. Yes, sir.

21 Q. That happens in any environment. Growing
22 up with these, you know, fellows I grew up with,
23 fellows you grew up with; is that right?

24 A. Yes, sir.

25 Q. That happens in the county lockup; is that

1 right?

2 A. Yes, sir.

3 Q. That happens in the prison system; isn't
4 that right?

5 A. Yes, sir.

6 Q. And that happens with the SNM, I guess,
7 and other similar gangs; would you agree?

8 A. Yes, sir.

9 Q. Okay. And that happens even in polite
10 society. Believe me, it happens.

11 So with these wannabes, you know, not long
12 ago -- maybe two or three weeks ago -- I had the
13 opportunity to have a discussion with Mr. Leonard
14 Lujan. I don't know if you know him or are familiar
15 with him, but are you -- either know him personally
16 or familiar with who he is?

17 A. Yeah, I know who he is.

18 Q. I had a conversation with him. He was
19 under oath. And I came away thinking that, well,
20 these wannabes oftentimes take credit for stuff they
21 didn't do or claim credit for stuff they would like
22 to have done, just to establish some status amongst
23 their associates. Is that something you'd agree
24 with?

25 A. Yeah. But like when you're in prison, and

1 say somebody does do something --

2 Q. Right.

3 A. -- they know. You know what I mean?

4 Everybody knows.

5 Q. But if you're not in prison, they won't
6 know.

7 A. No.

8 Q. So someone can say stuff and you'll never
9 know if it's true or not.

10 A. Correct, unless you know somebody that's
11 in prison.

12 Q. I can come up here and tell my colleagues:
13 "I had a case in New York City, and boy, I really
14 cleaned their clock out there. I had four
15 not-guilties in New York City."

16 If they're not there, they're not going to
17 know that; would you agree?

18 A. I agree.

19 Q. But I'd say this to build status and some
20 sort of prestige.

21 A. But they would put you to the test.

22 Q. Right. okay.

23 MR. SOLIS: That's all I have, Your Honor.
24 Thank you.

25 THE COURT: Thank you, Mr. Solis.

1 Any other defendant have cross-examination
2 of Mr. Gonzales?

3 All right. Mr. Castellano, do you have
4 redirect of Mr. Gonzales?

5 MR. CASTELLANO: Yes, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. CASTELLANO:

8 Q. Mr. Gonzales, let's start where Mr. Solis
9 left off. You mentioned people who might be
10 wannabes, but you also mentioned that people put
11 them to the test.

12 A. Yes, sir.

13 Q. In prison, how is it that, especially in a
14 gang, gang members put other people to the test
15 about things they say?

16 A. They'll tell them, go do something like,
17 "Hey, go beat that guy up," or, you know, "This gets
18 to be handled, so your number is up, so go handle
19 it."

20 Q. So if someone is bragging about how tough
21 he is, that's one way to put him to the test?

22 A. Like that. Or somebody is going to be,
23 like, "Oh, you think you're tough shit? Well, let's
24 go to the cell and see what you're really about."

25 Q. Has that been your experience?

1 A. Yeah, I have seen it.

2 Q. Is that the experience you had with Carlos
3 Herrera, also known as Lazy?

4 A. Yes, sir.

5 Q. And is there also talk amongst the gangs?
6 If someone says he was involved with a certain
7 stabbing or a murder, does the gang generally know
8 about that from discussions within the gang?

9 A. Yes, sir.

10 Q. I won't ask you what you told law
11 enforcement, but did you give information about
12 other people involved in murders from things that
13 you had heard through the gang?

14 A. Yes, sir.

15 Q. You were asked yesterday about whether you
16 sold drugs. Do you remember that?

17 A. Yes, sir.

18 Q. Were you aware that Agent Acee actually
19 bought drugs from another person named Phillip
20 Gonzalez?

21 A. No, I wasn't aware of that.

22 Q. Now, at the time that you were arrested in
23 December of 2016, were you already aware that it had
24 been a year since the SNM had been indicted
25 federally?

1 A. Just what I read on paper.

2 Q. At that point, were you aware that -- you
3 talked about them being weak and the numbers
4 dwindling. They were already charged in this case;
5 is that correct?

6 A. Yes.

7 Q. Is that part of the reason you thought
8 that the numbers were dwindling, because they were
9 now being prosecuted?

10 A. I think just because I know a lot of
11 people are just getting tired of the way it's
12 running.

13 Q. Why did you get out of the gang?

14 A. I just got tired of just, you know, the
15 people saying that they're this and that, and it's
16 supposed to be a family; it's not even a family.
17 You know what I mean? You've got two guys fighting
18 over a girl. That should be a personal issue. It
19 has nothing to do with the S. So I was, like, you
20 know what I mean -- and good guys getting killed
21 within our own for no reason.

22 Q. Would you say that even though this is a
23 gang, that there are still politics at play within
24 the gang?

25 A. Yes, sir.

1 Q. And is that something else that kind of
2 burned you out about the gang?

3 A. Yes, sir.

4 Q. When you first joined, was it because you
5 thought it would be more of a family atmosphere?

6 MR. SOLIS: Object to the leading
7 questions, Your Honor. He's suggesting the answer
8 to the witness.

9 THE COURT: It is very leading.
10 Sustained.

11 BY MR. CASTELLANO:

12 Q. When it comes to the idea of family, why
13 did you join the gang?

14 A. Because I liked the way -- when I went to
15 Estancia, the way the SNM was running in there.

16 Q. And how was it different from when you
17 first joined until you decided to leave the gang?

18 A. I started going to different prisons, and
19 you hear these brothers talking shit about these
20 brothers. And it was like: I didn't join for this.
21 Or these brothers are better. You're not part of
22 this group, so that group isn't worth a fuck. It's
23 like, I don't even want to be part of this, you know
24 what I mean? That's not why I got in.

25 Q. Yesterday you were asked about the number

1 of times you met with the FBI and things you may or
2 may not have said about SNM Gang members. Do you
3 remember that?

4 A. Yes, sir.

5 Q. Do you remember being shown a number of
6 reports?

7 A. Yes, sir.

8 Q. And do you remember on each of those
9 occasions what the nature of the report was, or what
10 was being reported?

11 A. Yes, sir.

12 Q. Now, do you recall a meeting on March 3,
13 2017, with the FBI? If you don't remember
14 specifically, I can refresh your recollection.

15 A. I don't remember. I remember seeing them,
16 but I don't remember, like, exactly what.

17 MR. CASTELLANO: May I approach the
18 witness, Your Honor?

19 THE COURT: You may.

20 BY MR. CASTELLANO:

21 Q. Mr. Gonzales, I'm going to show you a
22 report from March 3, 2017. It's Bates stamped
23 42335. First of all, just review it to yourself.

24 Is this a report involving you and a
25 meeting with the FBI?

1 A. Yes.

2 Q. How long is the report?

3 A. Not long.

4 Q. And from looking at that report, can you
5 tell the members of the jury what the purpose of
6 that meeting was? Without reading it to yourself,
7 what is the purpose of that meeting?

8 A. To let them know about Jimmie Joe.

9 Q. So in that situation, was that a meeting
10 to tell the FBI specifically about one person?

11 A. Yes, sir.

12 Q. And what were you telling the FBI about
13 that person?

14 A. That this guy wanted a gun.

15 Q. And did you eventually, in a cooperating
16 capacity, deliver a gun to Jimmie Joe Lucero, who
17 was arrested with that gun?

18 A. Yes, sir.

19 Q. And had he been asking you for a gun?

20 A. Yes, sir.

21 Q. I'll show you another report, Bates
22 stamped 29152, and it's June 5, 2016. Would you
23 review that to yourself? Can you tell the members
24 of the jury what the purpose of that meeting was?

25 A. Same thing, about the gun.

1 Q. Was there any discussion about any other
2 gang members at that time?

3 A. No.

4 Q. You were asked about a July meeting with
5 the FBI. There is a report from July. I'm going to
6 show the report, Bates stamped 29155, from July 20,
7 2017. I'm going to ask you if you remember what the
8 purpose of that meeting was.

9 A. About a murder, a cold case.

10 Q. Now, yesterday did you testify that you
11 informed law enforcement authorities about a
12 cold-case murder?

13 A. Yes, sir.

14 Q. And so was the purpose of this meeting
15 just to give them information about that murder?

16 A. Yes, sir.

17 Q. And at the time you gave that information,
18 was that murder still unsolved?

19 A. Yes, sir.

20 Q. Was that a murder from 1997?

21 A. Yes, sir.

22 Q. So every time you met with the FBI, could
23 it be for purposes other than giving information on
24 these people in court?

25 A. Yes, sir.

1 Q. Do you remember giving law enforcement a
2 statement on February 14, 2017?

3 A. Yes, sir.

4 Q. And that statement -- looks like it's
5 seven pages. Do you remember everything that you
6 told law enforcement? Can you remember that off the
7 top of your head?

8 A. Not like word for word.

9 MR. CASTELLANO: May I approach the
10 witness, Your Honor?

11 THE COURT: You may.

12 BY MR. CASTELLANO:

13 Q. I'm going to show you what's been marked
14 as Bates stamp 42328. And I want to ask you first
15 if you remember -- there were questions asked of you
16 about whether or not you knew membership was for
17 life.

18 A. Oh, yes.

19 Q. And to refresh your recollection, if you
20 don't remember specifically, I'm going to ask you a
21 question about what you knew and when. So, for
22 example, when you first joined the gang, what did
23 you understand about the rules?

24 A. My understanding was, like, you know, if
25 you see LCs or you see a brother, just be there for

1 our brother, and green-light on LCs, and just never
2 bow down.

3 Q. Can you recall your statement to the FBI
4 about whether the rules were clearly explained to
5 you when you first joined?

6 MR. COOPER: Can we have an answer as to
7 whether he does recall, Judge?

8 MR. CASTELLANO: Sure.

9 BY MR. CASTELLANO:

10 Q. Do you recall what you told the FBI about
11 that?

12 A. Yes.

13 Q. What did you tell them when you very first
14 joined the gang?

15 A. I just told him what they told me, is, you
16 know, like when you see an LC, that's our enemy.
17 You know, don't bow down. If you ever see a
18 brother, always have the brother's back.

19 Q. And do you recall whether, when you very
20 first joined, whether you were aware or not that
21 membership was for life, or did you learn that
22 later?

23 A. I learned that later.

24 Q. So related to the question about whether
25 or not the FBI was dwindling in numbers -- excuse

1 me, the SNM was dwindling in numbers, were you
2 referring to the state's SNM or the federal SNM?

3 A. The state.

4 Q. Are you aware that there is also a federal
5 SNM?

6 A. Yes.

7 Q. And are you aware of who some of the
8 members in the federal SNM are?

9 A. I know some of them, yes, sir.

10 Q. Who are some of those people?

11 A. I know there is Johnny Green Eyes, Freddie
12 Gallegos -- I mean Frankie Gallegos. Smurf was in
13 the feds. Football Head.

14 Q. And who is Football Head? Do you know his
15 name?

16 A. Freddie Quintana.

17 Q. And Smurf -- who is that person?

18 A. Leroy -- I can't remember his last name.

19 Q. From your experience with the gang, have
20 SNM members from the state also ended up in the
21 federal system and become part of the federal SNM?

22 A. To my understanding, we were all one
23 family, regardless of being in the feds or state.

24 Q. And you mentioned Frankie Gallegos. Is he
25 related to anybody?

1 A. Yes.

2 Q. Who are his brothers?

3 A. Joe Gallegos and Smiley. I don't know
4 Smiley, though.

5 Q. You know Smiley's name?

6 A. No, I can't recall.

7 Q. Do you remember what you said about people
8 who snitch and cooperate with law enforcement, what
9 the consequences are for them with the gang?

10 A. Yes, sir.

11 Q. What are the consequences?

12 A. Death.

13 Q. Your opinion, from your membership in the
14 gang in the past and cooperating today, there's a
15 green light on you?

16 A. Yes.

17 Q. Now, you were also asked about kind of
18 leadership positions in the gang and people who are
19 shot-callers. Do you recall whether there was a
20 change in how leaders functioned when the level
21 system was introduced in the pen?

22 MS. HARBOUR-VALDEZ: Your Honor, I'm
23 having a hard time hearing Mr. Castellano back here.

24 THE COURT: Can you get near a microphone,
25 Mr. Castellano?

1 MR. CASTELLANO: Sure. I was just
2 standing close for purpose of refreshing, Your
3 Honor.

4 BY MR. CASTELLANO:

5 Q. Okay. Mr. Gonzales, what do you recall
6 about the level system changing things in the SNM,
7 in terms of how leaders played a role?

8 A. That would be somebody there in the pod
9 that would be -- that would be calling shots.

10 Q. And can you explain to the members of the
11 jury, who may not understand what you mean by the
12 level system, what happened before the level system
13 was in place and what happened after?

14 A. Before the level system, we were in
15 population. So we'd get to go -- like all of us
16 would be going to the yard together, eating together
17 in the chow hall. And then, when the two murders
18 happened, they came in with the level system.

19 So there's -- like in Cruces, there is
20 only 16 to a pod, so we would just be the 16 in the
21 pod. And so with that, it's controlled movement.
22 And so only those 16 go outside together, they eat
23 together, and that's it. We can't communicate with
24 nobody else unless it's through the doors and by
25 letters. That was it.

1 Q. So when you referred to the two murders,
2 were those the Castillo and Garza murders?

3 A. Yes, sir.

4 Q. And then when you moved to the level
5 system, did you then begin having basically
6 shot-callers for each pod?

7 A. Yes, sir.

8 Q. Now, you also mentioned Carlos Herrera.
9 Was he someone who was also able to bring drugs into
10 the penitentiary?

11 A. Oh, yes, sir.

12 Q. And were those drugs distributed once they
13 came into the system?

14 A. Yes, sir.

15 Q. And from your experience with the SNM, was
16 his mother also involved with drug distribution?

17 A. Yes.

18 Q. Do you remember her name?

19 A. Geraldine.

20 Q. And are you aware, through your experience
21 with the SNM, whether she helped her son to bring
22 drugs into the facilities?

23 A. Yes, sir.

24 Q. When -- in terms of continuing membership,
25 once members were released from prison, were they

1 expected to continue contributing to the SNM?

2 A. Yes.

3 MR. SINDEL: Your Honor, this is all
4 outside the scope of any cross-examination, as far
5 as I can recall.

6 THE COURT: How is this related to the
7 cross?

8 MR. CASTELLANO: Your Honor, the
9 cross-examination contained questions about what he
10 did or didn't tell to the FBI, and so --

11 THE COURT: Well, but some of these just
12 seem to be new areas. I'll sustain on that
13 question.

14 BY MR. CASTELLANO:

15 Q. Let's talk about an issue that you were
16 asked about yesterday by Mr. Sindel. Do you
17 remember him asking you whether you had previously
18 given information about Joe Gallegos and his
19 drug-dealing?

20 A. Yes.

21 Q. Do you remember giving a statement to the
22 FBI in February of 2017, more than a year ago, about
23 Joe Gallegos and his drug-dealing?

24 A. Yes.

25 Q. What do you recall about -- telling the

1 FBI about meeting him when he was incarcerated in
2 Estancia?

3 A. I know that when I first went to Estancia
4 and he showed up, I know they used to take his
5 drugs.

6 Q. So was he bringing drugs in?

7 A. Yes.

8 Q. And then people were taking his drugs?

9 A. Yes.

10 Q. And then what happened once he got to
11 Southern, where you were?

12 A. All of a sudden he was a brother.

13 Q. He was a brother?

14 A. Yeah.

15 Q. And was he still able to bring drugs in?

16 A. Yes.

17 Q. Was this information you gave to the FBI
18 in 2017?

19 A. Yes.

20 Q. So is it fair to say that March of this
21 year is not the first time you told the FBI about
22 that?

23 A. No.

24 Q. You also remember having a discussion with
25 the FBI in February of 2017 about members not being

1 pleased with Lino Giron's leadership?

2 A. Yes.

3 Q. And how did that change from what you told
4 the FBI in 2017 -- how did that change when Billy
5 Garcia arrived at the facility?

6 A. Like it just -- everything was going to
7 change, everything was going to get real. Whatever
8 was supposed to get dealt with was going to get
9 dealt with.

10 Q. Is that information you shared with the
11 FBI more than a year ago?

12 A. Yes, sir.

13 Q. In terms of things you did and didn't tell
14 the FBI, did you also give them a little bit of
15 information regarding the Freddie Sanchez homicide?

16 A. Freddie Sanchez?

17 Q. Yes.

18 A. I don't recall Freddie Sanchez.

19 Q. Do you remember how soon after you left
20 prison that he was killed?

21 A. I heard it on the news, so --

22 Q. And were you aware of Freddie Sanchez'
23 status with the gang when you left?

24 A. Oh, you're talking about Fred Dawg; right?

25 Q. Yes.

1 A. Okay. Sorry about that. What I know,
2 like when I was there with him, he was the one
3 calling the shots. And that's why I tripped out
4 when I seen it on the news that they killed him.

5 Q. Were you aware of any allegations about
6 him snitching?

7 A. I heard, but nobody ever brought the
8 paperwork.

9 Q. And from your time when you were housed
10 with Fred Dawg, or Freddie Sanchez, were you aware
11 of whether or not the Rascon brothers were close
12 with Mr. Troup?

13 A. Yes.

14 Q. You said earlier, when you gave
15 information to the FBI, was it largely based on
16 questions put to you by them?

17 A. Yes, sir, or stuff to what -- questions
18 and then what I know.

19 Q. And then in March of this year, in
20 preparation for trial, do you remember meeting with
21 myself and at least one other FBI agent?

22 A. Yes.

23 Q. And then did you then again reference
24 Billy Garcia and the tone of the prison changing
25 once he arrived?

1 A. Yes, sir.

2 Q. Do you remember how soon before the
3 murders Billy Garcia arrived?

4 A. I think, what, like two weeks, a week.

5 Q. And is that your recollection? We may
6 have records to show it, but what's your best
7 recollection about when he arrived?

8 A. I think it was two weeks. Like I said, I
9 was in segregation, and then I got word that he was
10 there. Then I seen him in the yard. And I didn't
11 talk to him, but he was there.

12 MR. CASTELLANO: May I have a moment, Your
13 Honor?

14 THE COURT: You may.

15 MR. CASTELLANO: Your Honor, I pass the
16 witness.

17 THE COURT: Thank you, Mr. Castellano.
18 Did you have something, Mr. Cooper?

19 MR. COOPER: Briefly, Your Honor.

20 RECROSS-EXAMINATION

21 BY MR. COOPER:

22 Q. When you first agreed to cooperate with
23 Agent Acee, he asked you to give him all the
24 information that you had with regard to the SNM,
25 didn't he?

1 A. I gave him what he asked me. That was it.

2 Q. That's not my question.

3 A. Yes.

4 Q. So he asked you to give him all of the
5 information that you had with regard to SNM,
6 anything you knew about goings-on with SNM; right?

7 A. Yes.

8 Q. And yesterday, remember we went through
9 six statements?

10 A. Yes.

11 Q. And there were six times that you met with
12 Agent Acee or some other FBI agent, and you never
13 told them that you had seen Billy Garcia at Southern
14 before those murders; right?

15 A. No, I said he was there.

16 Q. But you never told them that, did you?

17 A. We weren't talking about that.

18 Q. I understand that, but you never told
19 that, and the first time you ever said that was when
20 you came into this courtroom; right?

21 A. No, not the first time I've been to a
22 courtroom.

23 Q. Okay. The first -- it wasn't the first
24 time you came to a courtroom?

25 A. No.

1 Q. The first time -- I'm sorry. Go ahead.

2 A. No, I might be misunderstanding you, so
3 ask the question again.

4 Q. You never told anybody about having seen
5 Billy Garcia at Southern until the day that you came
6 into this courtroom; right?

7 A. No.

8 Q. No?

9 A. No.

10 Q. When did you tell them?

11 A. When they asked me questions.

12 Q. Which time?

13 A. I think like the last question.

14 Q. They didn't put it in the report, because
15 you looked at that report yesterday, didn't you?

16 A. Yes.

17 Q. And you did not see any indication that
18 you had told them that you had seen Billy Garcia;
19 right?

20 A. Yeah.

21 Q. And again, speaking of this last report, I
22 asked you a series of three questions; in fact, with
23 regard to all six reports, I asked you a series of
24 three questions, and you never responded by saying
25 that you had ever told them. So I asked you, in

1 that report, Mr. Gonzales, you never said anything
2 about Wild Bill would come to clean things up once
3 he got to SNM, and you said no. And you looked at
4 that report, didn't you?

5 A. Yes.

6 Q. And you responded, "No, I never told him."

7 And then I asked you if you had ever seen
8 Billy Garcia when he came to Southern before those
9 murders. You looked at that report and you said no,
10 didn't you?

11 A. I was in segregation.

12 Q. I understand that. And you said no;
13 right?

14 A. Yeah.

15 Q. And then finally, I asked you if you had
16 ever told anybody about people checking themselves
17 in because Billy was coming to town, and you said
18 no; right?

19 A. Yes.

20 Q. And you looked at the report, and it
21 wasn't in that report, was it?

22 A. No, he didn't check in till Billy got
23 there.

24 Q. But you never said that -- okay. Let me
25 back up. So I asked you -- it was the first thing

1 we did when I stood up. I asked you about this
2 report, I asked you about this report, I asked you
3 about this report, this report, this report. Six
4 times I asked you about those reports, and my final
5 question was, with each one of those reports, "Did
6 you ever tell anyone that people were checking
7 themselves in when Billy arrived?" And you said,
8 "No." After looking at each report; right?

9 A. Yes.

10 MR. COOPER: Thank you. I have no further
11 questions.

12 THE COURT: Thank you, Mr. Cooper.

13 Any redirect, Mr. Castellano?

14 MR. CASTELLANO: Yes, Your Honor.

15 MR. COOPER: Your Honor, how many
16 redirects do we get? May I have recross?

17 THE COURT: I gave you recross, so I'll
18 give him redirect.

19 MR. COOPER: But he's already done one.

20 THE COURT: Well, I've been generous to
21 the recross as well. Mr. Castellano.

22 REDIRECT EXAMINATION

23 BY MR. CASTELLANO:

24 Q. Mr. Gonzales, did you see the reports that
25 defense counsel was showing in front of the jury?

1 A. Yes.

2 Q. Are those the ones we talked about earlier
3 that some of those meetings were strictly about law
4 enforcement operations?

5 A. Yes, sir.

6 Q. If you're there to give information about
7 a cold-case murder that's over 20 years old, was
8 that the topic of conversation for that day?

9 A. Yes, sir.

10 Q. And the same thing when you were doing an
11 undercover operation for the FBI to deliver a gun to
12 another felon; was that the issue for that day?

13 A. Yes, sir.

14 Q. And I want to ask you, in March of this
15 year, specifically -- if you don't remember, I can
16 refresh your recollection -- specifically what you
17 said about Billy Garcia, and whether you saw him in
18 the yard.

19 A. Yes.

20 Q. And do you recall whether you said to the
21 FBI that you saw him in the yard when he arrived?

22 A. Yes, sir.

23 Q. And do you remember your specific words
24 about Billy Garcia being a shot-caller and what he
25 was known to do?

1 A. Yes, sir.

2 Q. What do you remember?

3 A. I remember telling him that he's a
4 shot-caller and, you know, he does handle things.

5 Q. And you said he handled things. In the
6 report, did you say he was known to handle shit?

7 A. Yes.

8 Q. Is that what you told the FBI?

9 A. Yes, sir.

10 Q. And did you tell the FBI more than a year
11 ago about when Mr. Garcia arrived?

12 A. Yes.

13 Q. And did you also tell the FBI that when he
14 arrived, people complained to him and he gave the
15 okay for hits?

16 A. Yes.

17 Q. Is that information you gave more than a
18 year ago?

19 A. Yes.

20 MR. COOPER: Your Honor, I believe that's
21 beyond the scope of my recross.

22 THE COURT: I think it's related.

23 Overruled.

24 MR. CASTELLANO: I pass the witness, Your
25 Honor.

1 THE COURT: Thank you, Mr. Castellano.

2 All right. Mr. Gonzales, you may step
3 down. You're going to be subject to recall, so
4 you'll need to stay outside of the courtroom. But
5 you are free to leave the building.

6 THE WITNESS: Thank you.

7 THE COURT: Thank you for your testimony.

8 MR. COOPER: Your Honor, would the Court
9 admonish him not to discuss his testimony, if he's
10 still under recall?

11 THE COURT: Why don't y'all approach?

12 Mr. Gonzales, why don't you stand right
13 there.

14 And approach here.

15 MS. ARMIJO: Your Honor, just so that he
16 knows, he can leave the courthouse and go home;
17 correct?

18 THE COURT: Yes, he can go back to his
19 home.

20 (The following proceedings were held at
21 the bench.)

22 THE COURT: What do y'all want to have on
23 situations like this? Do you want to have an
24 agreement that they talk to attorneys or what?

25 MR. COOPER: Your Honor, I don't

1 believe --

2 THE COURT: He's off the stand, and he's
3 not under cross-examination, so I think the rule
4 allows him to talk to attorneys; just not other
5 witnesses. And so it would seem to me that unless
6 y'all want to have another agreement on him or other
7 witnesses, probably admonish him he can't talk to
8 other witnesses about his testimony, but he can talk
9 to attorneys.

10 MR. COOPER: Judge, I believe given why
11 he's subject to recall, I would consider him still
12 to be under cross, because Mr. Sindel has not
13 finished cross-examination. He didn't receive the
14 discovery. We still haven't received it yet, by the
15 way.

16 MR. CASTELLANO: It came from my email.
17 I'll double-check from my phone.

18 MR. SINDEL: That's another thing. Just
19 for the record, I could not get access this morning.
20 Probably a minute ago I got it, and was able to
21 secure the email. So I have not seen it.

22 MR. CASTELLANO: This is my proposal for
23 this witness and the other witnesses: I think
24 Mr. Cooper has a point that he is subject to being
25 recalled and recross-examined. So for Mr. Gonzales,

1 I would not be opposed to not having contact with
2 him, because he's subject to cross.

3 My proposal for all witnesses would be
4 that if they're on direct examination, that they can
5 still visit with the attorneys. For example, we may
6 want to show an additional exhibit to the person,
7 and that may save time for the direct examination,
8 but that witnesses not have contact with the calling
9 attorney when they're subject to cross-examination.
10 And that would apply both ways, because the purpose
11 of direct examination is basically for us to get our
12 information out. And it would be more efficient by
13 meeting with them to show them additional exhibits
14 ahead of time, and that changes when they're on
15 cross-examination. So a witness for either side
16 can't be rescued when they're subject to
17 cross-examination.

18 The one case I found on this is an old
19 Supreme Court case in which the defendant was not
20 allowed to have contact with the attorney on a short
21 recess during trial for that same purpose. But I
22 think the ultimate ruling was that the defendant
23 should have had access to his attorney on an
24 overnight break because they were going to discuss
25 other things related to the case. So that would be

1 my proposal, on breaks and things.

2 MR. SINDEL: That's one of my --

3 MR. CASTELLANO: Reiter, Geders?

4 MR. SINDEL: Futo.

5 THE COURT: Can y'all live with that?

6 Does that suit everybody? So with this fellow, I'll
7 tell him not to talk about his testimony to anyone,
8 attorneys included, and with the others. I think I
9 understand where the line is. If I get it wrong,
10 y'all can correct me. And I'll try to admonish the
11 witnesses where they are -- given where they are in
12 the examination.

13 MR. COOPER: Thank you, Judge.

14 MR. CASTELLANO: Thank you, Your Honor.

15 (The following proceedings were held in
16 open court.)

17 THE COURT: All right. Mr. Gonzales,
18 you're still subject to recall, so I'm going to
19 instruct you not to discuss your testimony with
20 anyone, whether it's other witnesses in the case,
21 investigators, or attorneys. You're not to discuss
22 your testimony in this case with anyone. Okay?

23 THE WITNESS: Okay.

24 THE COURT: You're free to leave the
25 building, and you're subject to recall, and you will

1 have to stay out of the courtroom. Thank you
2 Mr. Gonzales. Thank you for your testimony.

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4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 5th day of May, 2018.

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